

**2002**

**SESSION LAWS**

OF THE

**STATE OF WASHINGTON**

REGULAR SESSION  
FIFTY-SEVENTH LEGISLATURE  
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GARY REID  
Acting Code Reviser

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## WASHINGTON SESSION LAWS GENERAL INFORMATION

### 1. EDITIONS AVAILABLE.

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

### 2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

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

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

### 3. PARTIAL VETOES

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

### 4. EDITORIAL CORRECTIONS.

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

### 5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2002 regular session to be June 13, 2002 (midnight June 12th).
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date take effect upon that date.

### 6. INDEX AND TABLES

A cumulative index and tables of all 2002 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.



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## CHAPTER 1

[Initiative 747]

## LIMITING PROPERTY TAX INCREASES

AN ACT Relating to limiting property tax increases; amending RCW 84.55.005 and 84.55.0101; and creating new sections.

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

**POLICIES AND PURPOSES**

**NEW SECTION. Sec. 1.** This measure would limit property tax increases to 1% per year unless approved by the voters. Politicians have repeatedly failed to limit skyrocketing property taxes either by reducing property taxes or by limiting property tax increases in any meaningful way. Throughout Washington every year, taxing authorities regularly increase property taxes to the maximum limit factor of 106% while also receiving additional property tax revenue from new construction, improvements, increases in the value of state-assessed property, excess levies approved by the voters, and tax revenues generated from real estate excise taxes when property is sold. Property taxes are increasing so rapidly that working class families and senior citizens are being taxed out of their homes and making it nearly impossible for first-time home buyers to afford a home. The Washington state Constitution limits property taxes to 1% per year; this measure matches this principle by limiting property tax increases to 1% per year.

**LIMITING PROPERTY TAX INCREASES TO 1% PER YEAR  
UNLESS APPROVED BY THE VOTERS**

**Sec. 2.** RCW 84.55.005 and 2001 c 2 s 5 (Initiative Measure No. 722) are each 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 (~~((two))~~) one 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 (~~((two))~~) one percent;

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

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

**Sec. 3.** RCW 84.55.0101 and 2001 c 2 s 6 (Initiative Measure No. 722) 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 (~~two~~) one percent or less unless an increase greater than this limit is approved by the voters at an election as provided in RCW 84.55.050. 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.

**CONSTRUCTION CLAUSE**

NEW SECTION. **Sec. 4.** The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

**SEVERABILITY CLAUSE**

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.

**LEGISLATIVE INTENT**

NEW SECTION. **Sec. 6.** The people have clearly expressed their desire to limit taxes through the overwhelming passage of numerous initiatives and referendums. However, politicians throughout the state of Washington continue to ignore the mandate of these measures.

Politicians are reminded:

- (1) All political power is vested in the people, as stated in Article I, section 1 of the Washington state Constitution.
- (2) The first power reserved by the people is the initiative, as stated in Article II, section 1 of the Washington state Constitution.
- (3) Politicians are an employee of the people, not their boss.
- (4) Any property tax increase which violates the clear intent of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures.

Originally filed in Office of Secretary of State January 11, 2001.

Approved by the People of the State of Washington in the General Election on November 6, 2001.

**CHAPTER 2**

[Initiative 773]

**ADDITIONAL TOBACCO TAXES**

AN ACT Relating to improving the health of low-income persons; amending RCW 43.72.900; adding a new section to chapter 70.47 RCW; adding a new section to chapter 82.24 RCW; and adding a new section to chapter 82.26 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.47 RCW to read as follows:

It is the intent of the people to improve the health of low-income children and adults by expanding access to basic health care and by reducing tobacco-related and other diseases and illnesses that disproportionately affect low-income persons.

**Sec. 2.** RCW 43.72.900 and 1993 c 492 s 469 are each amended to read as follows:

(1) The health services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Subject to the transfers described in subsection (3) of this section, moneys in the account may be expended only for maintaining and expanding health services access for low-income residents, maintaining and expanding the public health system, maintaining and improving the capacity of the health care system, containing health care costs, and the regulation, planning, and administering of the health care system.

(2) Funds deposited into the health services account under sections 3 and 4 of this act shall be used solely as follows:

(a) Five million dollars for the state fiscal year beginning July 1, 2002, and five million dollars for the state fiscal year beginning July 1, 2003, shall be appropriated by the legislature for programs that effectively improve the health of low-income persons, including efforts to reduce diseases and illnesses that harm low-income persons. The department of health shall submit a report to the legislature on March 1, 2002, evaluating the cost-effectiveness of programs that improve the health of low-income persons and address diseases and illnesses that disproportionately affect low-income persons, and making recommendations to the legislature on which of these programs could most effectively utilize the funds appropriated under this subsection.

(b) Ten percent of the funds deposited into the health services account under sections 3 and 4 of this act remaining after the appropriation under (a) of this subsection shall be transferred no less frequently than annually by the treasurer to the tobacco prevention and control account established by RCW 43.79.480. The funds transferred shall be used exclusively for implementation of the Washington state tobacco prevention and control plan and shall be used only to supplement, and not supplant, funds in the tobacco prevention and control account as of January 1, 2001, however, these funds may be used to replace funds appropriated by the legislature for further implementation of the Washington state tobacco prevention and control plan for the biennium beginning July 1, 2001. For each state fiscal year beginning on and after July 1, 2002, the legislature shall appropriate no less than twenty-six million two hundred forty thousand dollars from the tobacco prevention and control account for implementation of the Washington state tobacco prevention and control plan.

(c) Because of its demonstrated effectiveness in improving the health of low-income persons and addressing illnesses and diseases that harm low-income persons, the remainder of the funds deposited into the health services account under sections 3 and 4 of this act shall be appropriated solely for Washington basic health plan enrollment as provided in chapter 70.47 RCW. Funds appropriated

pursuant to this subsection (2)(c) must supplement, and not supplant, the level of state funding needed to support enrollment of a minimum of one hundred twenty-five thousand persons for the fiscal year beginning July 1, 2002, and every fiscal year thereafter. The health care authority may enroll up to twenty thousand additional persons in the basic health plan during the biennium beginning July 1, 2001, above the base level of one hundred twenty-five thousand enrollees. The health care authority may enroll up to fifty thousand additional persons in the basic health plan during the biennium beginning July 1, 2003, above the base level of one hundred twenty-five thousand enrollees. For each biennium beginning on and after July 1, 2005, the health care authority may enroll up to at least one hundred seventy-five thousand enrollees. Funds appropriated under this subsection may be used to support outreach and enrollment activities only to the extent necessary to achieve the enrollment goals described in this section.

(3) Prior to expenditure for the purposes described in subsection (2) of this section, funds deposited into the health services account under sections 3 and 4 of this act shall first be transferred to the following accounts to ensure the continued availability of previously dedicated revenues for certain existing programs:

(a) To the violence reduction and drug enforcement account under RCW 69.50.520, two million two hundred forty-nine thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-eight thousand dollars for the state fiscal year beginning July 1, 2002, seven million seven hundred eighty-nine thousand dollars for the biennium beginning July 1, 2003 six million nine hundred thirt -two thousand dollars for the biennium beginning July 1, 2005, and six million nine hundred thirty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(2);

(b) To the health services account under this section, nine million seventy-seven thousand dollars for the state fiscal year beginning July 1, 2001, seventeen million one hundred eighty-eight thousand dollars for the state fiscal year beginning July 1, 2002, thirty-one million seven hundred fifty-five thousand dollars for the biennium beginning July 1, 2003, twenty-eight million six hundred twenty-two thousand dollars for the biennium beginning July 1, 2005, and twenty-eight million six hundred twenty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(3); and

(c) To the water quality account under RCW 70.146.030, two million two hundred three thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-four thousand dollars for the state fiscal year beginning July 1, 2002, eight million one hundred eighty-two thousand dollars for the biennium beginning July 1, 2003, seven million eight hundred eighty-five thousand dollars for the biennium beginning July 1, 2005, and seven million eight hundred eighty-five thousand dollars for each biennium thereafter, as required by RCW 82.24.027(2)(a).

NEW SECTION. Sec. 3. A new section is added to chapter 82.24 RCW to read as follows:

In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to the rate of thirty mills per cigarette effective January 1, 2002. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

**NEW SECTION. Sec. 4.** A new section is added to chapter 82.26 RCW to read as follows:

In addition to the taxes imposed upon the wholesale sales price of tobacco products set forth in RCW 82.26.020 and 82.26.025, a surtax is imposed equal to ninety-three and three-quarters percent of taxes levied under RCW 82.26.020, effective January 1, 2002. The surtax payable under this subsection shall be deposited in the health services account created under RCW 43.72.900 for the purposes set forth in that section.

Originally filed in Office of Secretary of State April 4, 2001.

Approved by the People of the State of Washington in the General Election on November 6, 2001.

### CHAPTER 3

[Initiative 775]

#### LONG-TERM IN-HOME CARE SERVICES

AN ACT Relating to regulating and improving long-term in-home care services; amending RCW 74.39A.030 and 74.39A.095; adding new sections to chapter 74.39A RCW; adding a new section to chapter 41.56 RCW; adding a new section to chapter 70.127 RCW; adding a new section to chapter 74.09 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1. FINDINGS.** The people of the state of Washington find as follows:

(1) Thousands of Washington seniors and persons with disabilities live independently in their own homes, which they prefer and is less costly than institutional care such as nursing homes.

(2) Many Washington seniors and persons with disabilities currently receive long-term in-home care services from individual providers hired directly by them under the medicaid personal care, community options programs entry system, or chore services program.

(3) Quality long-term in-home care services allow Washington seniors, persons with disabilities, and their families the choice of allowing seniors and persons with disabilities to remain in their homes, rather than forcing them into institutional care such as nursing homes. Long-term in-home care services are also less costly, saving Washington taxpayers significant amounts through lower reimbursement rates.

(4) The quality of long-term in-home care services in Washington would benefit from improved regulation, higher standards, better accountability, and

improved access to such services. The quality of long-term in-home care services would further be improved by a well-trained, stable individual provider work force earning reasonable wages and benefits.

(5) Washington seniors and persons with disabilities would benefit from the establishment of an authority that has the power and duty to regulate and improve the quality of long-term in-home care services.

(6) The authority should ensure that the quality of long-term in-home care services provided by individual providers is improved through better regulation, higher standards, increased accountability, and the enhanced ability to obtain services. The authority should also encourage stability in the individual provider work force through collective bargaining and by providing training opportunities.

**NEW SECTION.** **Sec. 2. AUTHORITY CREATED.** (1) The home care quality authority is established to regulate and improve the quality of long-term in-home care services by recruiting, training, and stabilizing the work force of individual providers.

(2) The authority consists of a board of nine members appointed by the governor. Five board members shall be current and/or former consumers of long-term in-home care services provided for functionally disabled persons, at least one of whom shall be a person with a developmental disability; one board member shall be a representative of the developmental disabilities planning council; one board member shall be a representative of the governor's committee on disability issues and employment; one board member shall be a representative of the state council on aging; and one board member shall be a representative of the Washington state association of area agencies on aging. Each board member serves a term of three years. If a vacancy occurs, the governor will make an appointment to become immediately effective for the unexpired term. Each board member is eligible for reappointment and may serve no more than two consecutive terms. In making appointments, the governor will take into consideration any nominations or recommendations made by the groups or agencies represented.

**NEW SECTION.** **Sec. 3. DEFINITIONS.** The definitions in this section apply throughout RCW 74.39A.030 and 74.39A.095 and sections 1 through 9 and 12 through 14 of this act unless the context clearly requires otherwise.

(1) "Authority" means the home care quality authority.

(2) "Board" means the board created under section 2 of this act.

(3) "Consumer" means a person to whom an individual provider provides any such services.

(4) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.



NEW SECTION. **Sec. 4. AUTHORITY DUTIES.** (1) The authority must carry out the following duties:

(a) Establish qualifications and reasonable standards for accountability for and investigate the background of individual providers and prospective individual providers, except in cases where, after the department has sought approval of any appropriate amendments or waivers under section 14 of this act, federal law or regulation requires that such qualifications and standards for accountability be established by another entity in order to preserve eligibility for federal funding. Qualifications established must include compliance with the minimum requirements for training and satisfactory criminal background checks as provided in RCW 74.39A.050 and confirmation that the individual provider or prospective individual provider is not currently listed on any long-term care abuse and neglect registry used by the department at the time of the investigation;

(b) Undertake recruiting activities to identify and recruit individual providers and prospective individual providers;

(c) Provide training opportunities, either directly or through contract, for individual providers, prospective individual providers, consumers, and prospective consumers;

(d) Provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the authority shall determine that:

(i) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW 74.39A.050;

(ii) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(iii) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department;

(e) Remove from the referral registry any individual provider or prospective individual provider the authority determines not to meet the qualifications set forth in (d) of this subsection or to have committed misfeasance or malfeasance in the performance of his or her duties as an individual provider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW;

(f) Provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider;

(g) Give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public

assistance or other low-income persons who would qualify for public assistance in the absence of such employment; and

(h) Cooperate with the department, area agencies on aging, and other federal, state, and local agencies to provide the services described and set forth in this section. If, in the course of carrying out its duties, the authority identifies concerns regarding the services being provided by an individual provider, the authority must notify the relevant area agency or department case manager regarding such concerns.

(2) In determining how best to carry out its duties, the authority must identify existing individual provider recruitment, training, and referral resources made available to consumers by other state and local public, private, and nonprofit agencies. The authority may coordinate with the agencies to provide a local presence for the authority and to provide consumers greater access to individual provider recruitment, training, and referral resources in a cost-effective manner. Using requests for proposals or similar processes, the authority may contract with the agencies to provide recruitment, training, and referral services if the authority determines the agencies can provide the services according to reasonable standards of performance determined by the authority. The authority must provide an opportunity for consumer participation in the determination of the standards.

**NEW SECTION. Sec. 5. DEPARTMENT DUTIES.** The department must perform criminal background checks for individual providers and prospective individual providers and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department.

**NEW SECTION. Sec. 6. EMPLOYMENT RELATIONSHIP--CONSUMER RIGHTS.** (1) Solely for the purposes of collective bargaining, the authority is the public employer, as defined in chapter 41.56 RCW, of individual providers, who are public employees, as defined in chapter 41.56 RCW, of the authority.

(2) Chapter 41.56 RCW governs the employment relationship between the authority and individual providers, except as otherwise expressly provided in this act and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this act or chapter 41.56 RCW.

(3) Individual providers who are employees of the authority under subsection (1) of this section are not, for that reason, employees of the state for any purpose.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) In implementing and administering this act, neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

(6)(a) The authority, the area agencies on aging, or their contractors under this act may not be held vicariously liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer.

(b) The members of the board are immune from any liability resulting from implementation of this act.

(7) Nothing in this section affects the state's responsibility with respect to the state payroll system or unemployment insurance for individual providers.

NEW SECTION. **Sec. 7. POWERS.** In carrying out its duties under this act, the authority may:

(1) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties or exercise of its powers, including contracts with public and private agencies, organizations, corporations, and individuals to pay them for services rendered or furnished;

(2) Offer and provide recruitment, training, and referral services to providers of long-term in-home care services other than individual providers and prospective individual providers, for a fee to be determined by the authority;

(3) Issue rules under the administrative procedure act, chapter 34.05 RCW, as necessary for the purpose and policies of this act;

(4) Establish offices, employ and discharge employees, agents, and contractors as necessary, and prescribe their duties and powers and fix their compensation, incur expenses, and create such liabilities as are reasonable and proper for the administration of this act;

(5) Solicit and accept for use any grant of money, services, or property from the federal government, the state, or any political subdivision or agency thereof, including federal matching funds under Title XIX of the federal social security act, and do all things necessary to cooperate with the federal government, the state, or any political subdivision or agency thereof in making an application for any grant;

(6) Coordinate its activities and cooperate with similar agencies in other states;

(7) Establish technical advisory committees to assist the board;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Acquire, hold, or dispose of real or personal property or any interest therein, and construct, lease, or otherwise provide facilities for the activities

conducted under this chapter, provided that the authority may not exercise any power of eminent domain;

(10) Sue and be sued in its own name;

(11) Delegate to the appropriate persons the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties if consistent with the purposes of this chapter; and

(12) Do other acts necessary or convenient to execute the powers expressly granted to it.

NEW SECTION. **Sec. 8. PERFORMANCE REVIEW.** (1) The joint legislative audit and review committee will conduct a performance review of the authority every two years and submit the review to the legislature and the governor. The first review will be submitted before December 1, 2006.

(2) The performance review will include an evaluation of the health, welfare, and satisfaction with services provided of the consumers receiving long-term in-home care services from individual providers under this act, including the degree to which all required services have been delivered, the degree to which consumers receiving services from individual providers have ultimately required additional or more intensive services, such as home health care, or have been placed in other residential settings or nursing homes, the promptness of response to consumer complaints, and any other issue the committee deems relevant.

(3) The performance review will provide an explanation of the full cost of individual provider services, including the administrative costs of the authority, unemployment compensation, social security and medicare payroll taxes paid by the department, and area agency on aging home care oversight costs.

(4) The performance review will make recommendations to the legislature and the governor for any amendments to this act that will further ensure the well-being of consumers and prospective consumers under this act, and the most efficient means of delivering required services. In addition, the first performance review will include findings and recommendations regarding the appropriateness of the authority's assumption of responsibility for verification of hours worked by individual providers, payment of individual providers, and other duties.

NEW SECTION. **Sec. 9. FUNDING.** (1) The governor must submit a request for funds necessary to administer this act and to implement any collective bargaining agreement entered into under section 6 of this act or for legislation necessary to implement any such agreement within ten days of the date on which the agreement is ratified or, if the legislature is not in session, within ten days after the next legislative session convenes. The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(2) When any increase in individual provider wages or benefits is negotiated or agreed to by the authority, no increase in wages or benefits negotiated or agreed to under this act will take effect unless and until, before its implementation, the

department has determined that the increase is consistent with federal law and federal financial participation in the provision of services under Title XIX of the federal social security act.

(3) After the expiration date of any collective bargaining agreement entered into under section 6 of this act, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

**Sec. 10.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each amended to read as follows:

(1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care.

(2) In expanding home and community services, the department shall: (a) Take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services; and (b) be authorized to use funds available under its community options program entry system waiver granted under section 1915(c) of the federal social security act to expand the availability of in-home, adult residential care, adult family homes, enhanced adult residential care, and assisted living services. By June 30, 1997, the department shall undertake to reduce the nursing home medicaid census by at least one thousand six hundred by assisting individuals who would otherwise require nursing facility services to obtain services of their choice, including assisted living services, enhanced adult residential care, and other home and community services. If a resident, or his or her legal representative, objects to a discharge decision initiated by the department, the resident shall not be discharged if the resident has been assessed and determined to require nursing facility services. In contracting with nursing homes and boarding homes for enhanced adult residential care placements, the department shall not require, by contract or through other means, structural modifications to existing building construction.

(3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care. In the event of any conflict between any such rule and a collective bargaining agreement entered into under sections 6 and 9 of this act, the collective bargaining agreement prevails.

(b) The department may authorize an enhanced adult residential care rate for nursing homes that temporarily or permanently convert their bed use for the purpose of providing enhanced adult residential care under chapter 70.38 RCW, when the department determines that payment of an enhanced rate is cost-effective and necessary to foster expansion of contracted enhanced adult residential care services. As an incentive for nursing homes to permanently convert a portion of its nursing home bed capacity for the purpose of providing enhanced adult

residential care, the department may authorize a supplemental add-on to the enhanced adult residential care rate.

(c) The department may authorize a supplemental assisted living services rate for up to four years for facilities that convert from nursing home use and do not retain rights to the converted nursing home beds under chapter 70.38 RCW, if the department determines that payment of a supplemental rate is cost-effective and necessary to foster expansion of contracted assisted living services.

**Sec. 11.** RCW 74.39A.095 and 2000 c 87 s 5 are each amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide ~~((adequate))~~ oversight of the care being provided to consumers receiving services under this section ~~((:—Such oversight shall))~~ to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but ((is)) are not limited to:

(a) Verification that ~~((the))~~ any individual provider who has not been referred to a consumer by the authority established under this act has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) ~~((Home visits or telephone contacts sufficient to ensure that the plan of care is being appropriately implemented))~~ Monitoring the consumer's plan of care to ensure that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessment and reauthorization of services;

(e) Monitoring of individual provider performance. If, in the course of its case management activities, the area agency on aging identifies concerns regarding the care being provided by an individual provider who was referred by the authority, the area agency on aging must notify the authority regarding its concerns; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider who has not been referred to a consumer by the authority.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about

any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement that the individual provider has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. When the department or

area agency on aging terminates or summarily suspends a contract under this subsection, it must provide oral and written notice of the action taken to the authority. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

NEW SECTION. Sec. 12. In addition to the entities listed in RCW 41.56.020, this chapter applies to individual providers under sections 6 and 9 of this act.

NEW SECTION. Sec. 13. The authority established by this act is not subject to regulation for purposes of this chapter.

NEW SECTION. Sec. 14. The department must seek approval from the federal health care financing administration of any amendments to the existing state plan or waivers necessary to ensure federal financial participation in the provision of services to consumers under Title XIX of the federal social security act.

NEW SECTION. Sec. 15. CODIFICATION. Sections 1 through 9 of this act are each added to chapter 74.39A RCW. Section 12 of this act is added to chapter 41.56 RCW. Section 13 of this act is added to chapter 70.127 RCW. Section 14 of this act is added to chapter 74.09 RCW.

NEW SECTION. Sec. 16. CAPTIONS. Captions used in this act are not any part of the law.

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

Originally filed in Office of Secretary of State April 17, 2001.

Approved by the People of the State of Washington in the General Election on November 6, 2001.

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## CHAPTER 4

[Senate Bill 6296]

### REDISTRICTING PLAN—TIMELINE

AN ACT Relating to the timeline for submission of a redistricting plan by the redistricting commission; amending RCW 44.05.100; creating a new section; and declaring an emergency.

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



**Sec. 1.** RCW 44.05.100 and 1995 c 88 s 1 are each amended to read as follows:

(1) Upon approval of a redistricting plan by three of the voting members of the commission, but not later than (~~December 15th~~) January 1st of the year ending in (~~one~~) two, the commission shall submit the plan to the legislature.

(2) After submission of the plan by the commission, the legislature shall have the next thirty days during any regular or special session to amend the commission's plan. If the legislature amends the commission's plan the legislature's amendment must be approved by an affirmative vote in each house of two-thirds of the members elected or appointed thereto, and may not include more than two percent of the population of any legislative or congressional district.

(3) The plan approved by the commission, with any amendment approved by the legislature, shall be final upon approval of such amendment or after expiration of the time provided for legislative amendment by subsection (2) of this section whichever occurs first, and shall constitute the districting law applicable to this state for legislative and congressional elections, beginning with the next elections held in the year ending in two. This plan shall be in force until the effective date of the plan based upon the next succeeding federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).

(4) If three of the voting members of the commission fail to approve and submit a plan within the time limitations provided in subsection (1) of this section, the supreme court shall adopt a plan by March 1st of the year ending in two. Any such plan approved by the court is final and constitutes the districting law applicable to this state for legislative and congressional elections, beginning with the next election held in the year ending in two. This plan shall be in force until the effective date of the plan based on the next succeeding federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).

NEW SECTION. **Sec. 2.** This act is remedial and curative in nature and applies retroactively to any plan or portion of a plan submitted to the legislature by the redistricting commission established in 2001.

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 January 14, 2002.

Passed the House January 16, 2002.

Approved by the Governor January 22, 2002.

Filed in Office of Secretary of State January 22, 2002.

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## CHAPTER 5

[Engrossed Substitute House Bill 2304]  
TRANSPORTATION

AN ACT Relating to transportation; amending RCW 41.06.380, 39.12.070, 39.12.080, 47.05.010, 47.05.030, 47.05.035, 47.06.130, 47.05.051, 35.84.060, 47.06.050, and 47.06.090; adding new sections to chapter 47.28 RCW; adding a new section to chapter 49.04 RCW; adding a new section to chapter 47.01 RCW; adding a new section to chapter 47.06 RCW; adding a new section to chapter 39.12 RCW; adding a new section to chapter 36.56 RCW; adding a new section to chapter 36.57A RCW; adding a new section to chapter 46.68 RCW; adding a new section to chapter 81.112 RCW; adding a new section to chapter 36.78 RCW; creating new sections; making an appropriation; and providing effective dates.

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

**PART I  
ESTABLISHMENT OF TRANSPORTATION  
PERFORMANCE MEASURES**

NEW SECTION. **Sec. 101. LEGISLATIVE INTENT.** It is the intent of the legislature to establish policy goals for the operation, performance of, and investment in, the state's transportation system. The policy goals shall consist of, but not be limited to, the following benchmark categories, adopted by the state's Blue Ribbon Commission on Transportation on November 30, 2000. In addition to improving safety, public investments in transportation shall support achievement of these and other priority goals:

No interstate highways, state routes, and local arterials shall be in poor condition; no bridges shall be structurally deficient, and safety retrofits shall be performed on those state bridges at the highest seismic risk levels; traffic congestion on urban state highways shall be significantly reduced and be no worse than the national mean; delay per driver shall be significantly reduced and no worse than the national mean; per capita vehicle miles traveled shall be maintained at 2000 levels; the nonauto share of commuter trips shall be increased in urban areas; administrative costs as a percentage of transportation spending shall achieve the most efficient quartile nationally; and the state's public transit agencies shall achieve the median cost per vehicle revenue hour of peer transit agencies, adjusting for the regional cost-of-living.

These policy goals shall be the basis for establishment of detailed and measurable performance benchmarks.

It is the intent of the legislature that the transportation commission establish performance measures to ensure transportation system performance at local, regional, and state government levels, and the transportation commission should work with appropriate government entities to accomplish this.

NEW SECTION. **Sec. 102.** Section 101 of this act takes effect July 1, 2002.

**PART II  
ALTERNATIVE DELIVERY PROCEDURES FOR  
CONSTRUCTION SERVICES**

NEW SECTION. **Sec. 201.** The legislature finds that there is a pressing need for additional transportation projects to meet the mobility needs of Washington citizens. With major new investments approved to meet these pressing needs, additional work force assistance is necessary to ensure and enhance project

delivery timelines. Recruiting and retaining a high quality work force, and implementing new and innovative procedures for delivering these transportation projects is required to accomplish them on a timely basis that best serves the public. It is the intent of sections 203 and 204 of this act that no state employees will lose their employment as a result of implementing new and innovative project delivery procedures.

**NEW SECTION. Sec. 202.** A new section is added to chapter 47.28 RCW to read as follows:

The definitions in this section apply throughout section 203 of this act and RCW 41.06.380 unless the context clearly requires otherwise.

(1) "Construction services" means those services that aid in the delivery of the highway construction program and include, but are not limited to, real estate services and construction engineering services.

(2) "Construction engineering services" includes, but is not limited to, construction management, construction administration, materials testing, materials documentation, contractor payments and general administration, construction oversight, and inspection and surveying.

**NEW SECTION. Sec. 203.** A new section is added to chapter 47.28 RCW to read as follows:

(1) The department of transportation shall work with representatives of transportation labor groups to develop a financial incentive program to aid in retention and recruitment of employee classifications where problems exist and program delivery is negatively affected. The department's financial incentive program must be reviewed and approved by the legislature before it can be implemented. This program must support the goal of enhancing project delivery timelines as outlined in section 201 of this act. Upon receiving approval from the legislature, the department of personnel shall implement, as required, specific aspects of the financial incentive package, as developed by the department of transportation.

(2) Notwithstanding chapter 41.06 RCW, the department of transportation may acquire services from qualified private firms in order to deliver the transportation construction program to the public. Services may be acquired solely for augmenting the department's work force capacity and only when the department's transportation construction program cannot be delivered through its existing or readily available work force. The department of transportation shall work with representatives of transportation labor groups to develop and implement a program identifying those projects requiring contracted services while establishing a program as defined in subsection (1) of this section to provide the classified personnel necessary to deliver future construction programs. The procedures for acquiring construction engineering services from private firms may not be used to displace existing state employees nor diminish the number of existing classified positions in the present construction program. The acquisition procedures must be in accordance with chapter 39.80 RCW.

(3) Starting in December 2003, and biennially thereafter, the secretary shall report to the transportation committees of the legislature on the use of construction engineering services from private firms authorized under this section. The information provided to the committees must include an assessment of the benefits and costs associated with using construction engineering services, or other services, from private firms, and a comparison of public versus private sector costs. The secretary is authorized to act on these findings to ensure the most cost-effective means of service delivery.

**Sec. 204.** RCW 41.06.380 and 1979 ex.s. c 46 s 2 are each amended to read as follows:

(1) Nothing contained in this chapter shall prohibit any department, as defined in RCW 41.06.020, from purchasing services by contract with individuals or business entities if such services were regularly purchased by valid contract by such department prior to April 23, 1979: PROVIDED, That no such contract may be executed or renewed if it would have the effect of terminating classified employees or classified employee positions existing at the time of the execution or renewal of the contract.

(2) Nothing contained in this chapter prohibits the department of transportation from purchasing construction services or construction engineering services, as those terms are defined in section 202 of this act, by contract from qualified private businesses as specified in section 203(2) of this act.

**NEW SECTION. Sec. 205.** Sections 201 through 204 of this act and RCW 41.06.380(2) are null and void if new transportation revenues do not become law by January 1, 2003. Sections 201 through 204 of this act and RCW 41.06.380(2) are effective only for the period consistent with the new transportation revenues, after which time these provisions will expire.

**PART III  
APPRENTICESHIP AND ADJUSTMENTS TO PREVAILING  
WAGE PROVISIONS**

**NEW SECTION. Sec. 301.** (1) The legislature finds that a skilled technical work force is necessary for maintaining, preserving, and improving Washington's transportation system. The Blue Ribbon Commission on Transportation found that state and local transportation agencies are showing signs of a work force that is insufficiently skilled to operate the transportation system at its highest level. Sections 301 through 308 of this act are intended to explore methods for fostering a stronger industry in transportation planning and engineering.

(2) It is the intent of the legislature that the state prevailing wage process operate efficiently, that the process allow contractors and workers to be paid promptly, and that new technologies and innovative outreach methods be used to enhance wage surveys in order to better reflect current wages in counties across the state.

(3) The legislature finds that in order to enhance the prevailing wage process it is appropriate for all intent and affidavit fees paid by contractors be dedicated to the sole purpose of administering the state prevailing wage program.

(4) To accomplish the intent of this section and in order to enhance the response of businesses and labor representatives to the prevailing wage survey process, the department shall undertake the following activities:

(a) Establish a goal of conducting surveys for each trade every three years;

(b) Actively promote increased response rates from all survey recipients in every county both urban and rural. The department shall provide public education and technical assistance to businesses, labor representatives, and public agencies in order to promote a better understanding of prevailing wage laws and increased participation in the prevailing wage survey process;

(c) Actively work with businesses, labor representatives, public agencies, and others to ensure the integrity of information used in the development of prevailing wage rates, and ensure uniform compliance with requirements of sections 301 through 308 of this act;

(d) Maintain a timely processing of intents and affidavits, with a target processing time no greater than seven working days from receipt of completed forms;

(e) Develop and implement electronic processing of intents and affidavits and promote the efficient and effective use of technology to improve the services provided by the prevailing wage program.

**NEW SECTION. Sec. 302.** A new section is added to chapter 49.04 RCW to read as follows:

The apprenticeship council shall work with the department of transportation, local transportation jurisdictions, local and statewide joint apprenticeships, other apprenticeship programs, representatives of labor and business organizations with interest and expertise in the transportation work force, and representatives of the state's universities and community and vocational colleges to establish technical apprenticeship opportunities specific to the needs of transportation. The council shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2002. The report must include, but not be limited to, findings and recommendations regarding the establishment of transportation technical training programs within the community and vocational college system and in the state universities.

**NEW SECTION. Sec. 303.** A new section is added to chapter 47.01 RCW to read as follows:

The department of transportation shall work with local transportation jurisdictions and representatives of transportation labor groups to establish a human resources skills bank of transportation professionals. The skills bank must be designed to allow all transportation authorities to draw from it when needed. The department shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2002. The report must

include, but not be limited to, identification of any statutory or administrative rule changes necessary to create the skills bank and allow it to function in the manner described.

NEW SECTION. **Sec. 304.** A new section is added to chapter 47.06 RCW to read as follows:

The state-interest component of the statewide multimodal transportation plan must include a plan for enhancing the skills of the existing technical transportation work force.

NEW SECTION. **Sec. 305.** The department of labor and industries, in cooperation with the department of transportation, shall conduct an assessment of the current practices, including survey techniques, used in setting prevailing wages for those trades related to transportation facilities and transportation project delivery. The assessment must include an analysis of regional variations and stratified random sampling survey methods. A final report must be submitted to the governor and the transportation and labor committees of the senate and house of representatives by December 1, 2002.

NEW SECTION. **Sec. 306.** A new section is added to chapter 39.12 RCW to read as follows:

(1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department may be used only in the county for which the work was performed.

(2) This section only applies to prevailing wage surveys initiated on or after August 1, 2002.

**Sec. 307.** RCW 39.12.070 and 1993 c 404 s 1 are each amended to read as follows:

The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. The fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. ~~((On the fifteenth day of the first month of each quarterly period, an amount equalling thirty percent of the revenues received into the public works administration account shall be transferred into the general fund.))~~ The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation

to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be no greater than twenty-five dollars.

**Sec. 308.** RCW 39.12.080 and 2001 c 219 s 3 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.

**NEW SECTION. Sec. 309.** Sections 301 through 308 and 310 of this act are null and void if new transportation revenues do not become law by January 1, 2003.

**NEW SECTION. Sec. 310.** The sum of nine hundred fifty thousand dollars, or as much thereof as may be necessary, is appropriated from the public works administration account to the department of labor and industries for the biennium ending June 30, 2003, to carry out the purposes of sections 306 through 308 of this act.

#### **PART IV TRANSPORTATION PLANNING AND EFFICIENCY**

**Sec. 401.** RCW 47.05.010 and 1993 c 490 s 1 are each amended to read as follows:

The legislature finds that solutions to state highway deficiencies have become increasingly complex and diverse and that anticipated transportation revenues will fall substantially short of the amount required to satisfy all transportation needs. Difficult investment trade-offs will be required.

It is the intent of the legislature that investment of state transportation funds to address deficiencies on the state highway system be based on a policy of priority programming having as its basis the rational selection of projects and services according to factual need and an evaluation of life cycle costs and benefits ~~((and which))~~ that are systematically scheduled to carry out defined objectives within available revenue. The state must develop analytic tools to use a common methodology to measure benefits and costs for all modes.

The priority programming system ((~~shall~~)) must ensure preservation of the existing state highway system, relieve congestion, provide mobility for people and goods, support the state's economy, and promote environmental protection and energy conservation.

The priority programming system ((~~shall~~)) must implement the state-owned highway component of the statewide ((~~multimodal~~)) transportation plan, consistent with local and regional transportation plans, by targeting state transportation investment to appropriate multimodal solutions ((~~which~~)) that address identified state highway system deficiencies.

The priority programming system for improvements ((~~shall~~)) must incorporate a broad range of solutions that are identified in the statewide ((~~multimodal~~)) transportation plan as appropriate to address state highway system deficiencies, including but not limited to highway expansion, efficiency improvements, nonmotorized transportation facilities, high occupancy vehicle facilities, transit facilities and services, rail facilities and services, and transportation demand management programs.

**Sec. 402.** RCW 47.05.030 and 1998 c 171 s 6 are each amended to read as follows:

The transportation commission shall adopt a comprehensive six-year investment program specifying program objectives and performance measures for the preservation and improvement programs defined in this section. In the specification of investment program objectives and performance measures, the transportation commission, in consultation with the Washington state department of transportation, shall define and adopt standards for effective programming and prioritization practices including a needs analysis process. The ((~~needs~~)) analysis process ((~~shall~~)) must ensure the identification of problems and deficiencies, the evaluation of alternative solutions and trade-offs, and estimations of the costs and benefits of prospective projects. The investment program ((~~shall~~)) must be revised biennially, effective on July 1st of odd-numbered years. The investment program ((~~shall~~)) must be based upon the needs identified in the state-owned highway component of the statewide ((~~multimodal~~)) transportation plan as defined in RCW 47.01.071(3).

(1) The preservation program ((~~shall~~)) consists of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing. The preservation program must require use of the most cost-effective pavement surfaces, considering:

- (a) Life-cycle cost analysis;
- (b) Traffic volume;
- (c) Subgrade soil conditions;
- (d) Environmental and weather conditions;
- (e) Materials available; and
- (f) Construction factors.



The comprehensive six-year investment program for preservation (~~shall~~) must identify projects for two years and an investment plan for the remaining four years.

(2) The improvement program (~~shall~~) consists of investments needed to address identified deficiencies on the state highway system to increase mobility, address congestion, and improve (~~mobility,~~) safety, support for the economy, and protection of the environment. The six-year investment program for improvements (~~shall~~) must identify projects for two years and major deficiencies proposed to be addressed in the six-year period giving consideration to relative benefits and life cycle costing. The transportation commission shall give higher priority for correcting identified deficiencies on those facilities classified as facilities of statewide significance as defined in RCW 47.06.140. Project prioritization must be based primarily upon cost-benefit analysis, where appropriate.

The transportation commission shall approve and present the comprehensive six-year investment program to the legislature in support of the biennial budget request under RCW 44.40.070 and 44.40.080.

**Sec. 403.** RCW 47.05.035 and 1993 c 490 s 4 are each amended to read as follows:

(1) The department and the commission shall use the transportation demand modeling tools developed under subsection (2) of this section to evaluate investments based on the best mode or improvement, or mix of modes and improvements, to meet current and future long-term demand within a corridor or stem for the lowest cost. The end result of these demand modeling tools is to provide a cost-benefit analysis by which the department and the commission can determine the relative mobility improvement and congestion relief each mode or improvement under consideration will provide and the relative investment each mode or improvement under consideration will need to achieve that relief.

(2) The department will participate in the refinement, enhancement, and application of existing transportation demand modeling tools to be used to evaluate investments. This participation and use of transportation demand modeling tools will be phased in.

(3) In developing program objectives and performance measures, the transportation commission shall evaluate investment trade-offs between the preservation and improvement programs. In making these investment trade-offs, the commission shall evaluate, using cost-benefit techniques, roadway and bridge maintenance activities as compared to roadway and bridge preservation program activities and adjust those programs accordingly.

(4) The commission shall allocate the estimated revenue between preservation and improvement programs giving primary consideration to the following factors:

~~((1))~~ (a) The relative needs in each of the programs and the system performance levels that can be achieved by meeting these needs;

~~((2))~~ (b) The need to provide adequate funding for preservation to protect the state's investment in its existing highway system;

~~((3))~~ (c) The continuity of future transportation development with those improvements previously programmed; and

~~((4))~~ (d) The availability of dedicated funds for a specific type of work.

**Sec. 404.** RCW 47.06.130 and 1993 c 446 s 13 are each amended to read as follows:

(1) The department may carry out special transportation planning studies to resolve specific issues with the development of the state transportation system or other statewide transportation issues.

(2) The department shall conduct multimodal corridor analyses on major congested corridors where needed improvements are likely to cost in excess of one hundred million dollars. Analysis will include the cost-effectiveness of all feasible strategies in addressing congestion or improving mobility within the corridor, and must recommend the most effective strategy or mix of strategies to address identified deficiencies. A long-term view of corridors must be employed to determine whether an existing corridor should be expanded, a city or county road should become a state route, and whether a new corridor is needed to alleviate congestion and enhance mobility based on travel demand. To the extent practicable, full costs of all strategies must be reflected in the analysis. At a minimum, this analysis must include:

(a) The current and projected future demand for total person trips on that corridor;

(b) The impact of making no improvements to that corridor;

(c) The daily cost per added person served for each mode or improvement proposed to meet demand;

(d) The cost per hour of travel time saved per day for each mode or improvement proposed to meet demand; and

(e) How much of the current and anticipated future demand will be met and left unmet for each mode or improvement proposed to meet demand.

The end result of this analysis will be to provide a cost-benefit analysis by which policymakers can determine the most cost-effective improvement or mode, or mix of improvements and modes, for increasing mobility and reducing congestion.

**NEW SECTION. Sec. 405.** The legislature intends that funding for transportation mobility improvements be allocated to the worst traffic chokepoints in the state. Furthermore, the legislature intends to fund projects that provide systemic relief throughout a transportation corridor, rather than spot improvements that fail to improve overall mobility within a corridor.

**Sec. 406.** RCW 47.05.051 and 1998 c 175 s 12 are each amended to read as follows:

(1) The comprehensive six-year investment program shall be based upon the needs identified in the state-owned highway component of the statewide

multimodal transportation plan as defined in RCW 47.01.071(3) and priority selection systems that incorporate the following criteria:

((1)) (a) Priority programming for the preservation program shall take into account the following, not necessarily in order of importance:

((2)) (i) Extending the service life of the existing highway system, including using the most cost-effective pavement surfaces, considering:

(A) Life-cycle cost analysis;

(B) Traffic volume;

(C) Subgrade soil conditions;

(D) Environmental and weather conditions;

(E) Materials available; and

(F) Construction factors;

((3)) (ii) Ensuring the structural ability to carry loads imposed upon highways and bridges; and

((4)) (iii) Minimizing life cycle costs. The transportation commission in carrying out the provisions of this section may delegate to the department of transportation the authority to select preservation projects to be included in the six-year program.

((5)) (b) Priority programming for the improvement program (~~shall take into account~~) must be based primarily upon the following:

((6)) (i) Traffic congestion, delay, and accidents;

(ii) Location within a heavily traveled transportation corridor;

(iii) Synchronization with other potential transportation projects, including transit and multimodal projects, within the heavily traveled corridor; and

(iv) Use of benefit/cost analysis wherever feasible to determine the value of the proposed project.

(c) Priority programming for the improvement program may also take into account:

(i) Support for the state's economy, including job creation and job preservation;

((7)) (ii) The cost-effective movement of people and goods;

((8)) (iii) Accident and accident risk reduction;

((9)) (iv) Protection of the state's natural environment;

((10)) (v) Continuity and systematic development of the highway transportation network;

((11)) (vi) Consistency with local comprehensive plans developed under chapter 36.70A RCW;

((12)) (vii) Consistency with regional transportation plans developed under chapter 47.80 RCW;

((13)) (viii) Public views concerning proposed improvements;

((14)) (ix) The conservation of energy resources;

((15)) (x) Feasibility of financing the full proposed improvement;

((16)) (xi) Commitments established in previous legislative sessions;

~~((f))~~ (xii) Relative costs and benefits of candidate programs~~(;)~~.

~~((m))~~ (d) Major projects addressing capacity deficiencies which prioritize allowing for preliminary engineering shall be reprioritized during the succeeding biennium, based upon updated project data. Reprioritized projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding~~(; and)~~.

~~((n))~~ (e) Major project approvals which significantly increase a project's scope or cost from original prioritization estimates shall include a review of the project's estimated revised priority rank and the level of funding provided. Projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

~~((o))~~ (2) The commission may depart from the priority programming established under subsection~~((s))~~ (1) ~~((and (2)))~~ of this section: (a) To the extent that otherwise funds cannot be utilized feasibly within the program; (b) as may be required by a court judgment, legally binding agreement, or state and federal laws and regulations; (c) as may be required to coordinate with federal, local, or other state agency construction projects; (d) to take advantage of some substantial financial benefit that may be available; (e) for continuity of route development; or (f) because of changed financial or physical conditions of an unforeseen or emergent nature. The commission or secretary of transportation shall maintain in its files information sufficient to show the extent to which the commission has departed from the established priority.

~~((p))~~ (3) The commission shall identify those projects that yield freight mobility benefits or that alleviate the impacts of freight mobility upon affected communities.

**NEW SECTION. Sec. 407.** The department of transportation shall report the results of its priority programming under RCW 47.05.051 to the transportation committees of the senate and house of representatives by December 1, 2003, and December 1, 2005.

**NEW SECTION. Sec. 408.** The legislature finds that roads, streets, bridges, and highways in the state represent public assets worth over one hundred billion dollars. These investments require regular maintenance and preservation, or rehabilitation, to provide cost-effective transportation services. Many of these facilities are in poor condition. Given the magnitude of public investment and the importance of safe, reliable roadways to the motoring public, the legislature intends to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for these transportation facilities.

**Sec. 409.** RCW 35.84.060 and 1969 ex.s. c 281 s 26 are each amended to read as follows:

Every municipal corporation which owns or operates an urban public transportation system as defined in RCW 47.04.082 within its corporate limits, may acquire, construct, extend, own, or operate such urban public transportation

system to any point or points not to exceed fifteen miles outside of its corporate limits: PROVIDED, That no municipal corporation shall extend its urban public transportation system beyond its corporate limits to operate in any territory already served by a privately operated auto transportation company holding a certificate of public convenience and necessity from the utilities and transportation commission.

As a condition of receiving state funding, the municipal corporation shall submit a maintenance management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the municipality, and provide a preservation plan based on lowest life cycle cost methodologies.

**NEW SECTION. Sec. 410.** A new section is added to chapter 36.56 RCW to read as follows:

As a condition of receiving state funding, a county that has assumed the transportation functions of a metropolitan municipal corporation shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the county, and provide a preservation plan based on lowest life cycle cost methodologies.

**NEW SECTION. Sec. 411.** A new section is added to chapter 36.57A RCW to read as follows:

As a condition of receiving state funding, a public transportation benefit area authority shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the authority, and provide a preservation plan based on lowest life cycle cost methodologies.

**NEW SECTION. Sec. 412.** A new section is added to chapter 46.68 RCW to read as follows:

During the 2003-2005 biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia. The rating system used by cities and towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the transportation commission or its successor entity.

**Sec. 413.** RCW 47.06.050 and I993 c 446 s 5 are each amended to read as follows:

The state-owned facilities component of the statewide transportation plan shall consist of:

(1) The state highway system plan, which identifies program and financing needs and recommends specific and financially realistic improvements to preserve the structural integrity of the state highway system, ensure acceptable operating

conditions, and provide for enhanced access to scenic, recreational, and cultural resources. The state highway system plan shall contain the following elements:

(a) A system preservation element, which shall establish structural preservation objectives for the state highway system including bridges, identify current and future structural deficiencies based upon analysis of current conditions and projected future deterioration, and recommend program funding levels and specific actions necessary to preserve the structural integrity of the state highway system consistent with adopted objectives. Lowest life cycle cost methodologies must be used in developing a pavement management system. This element shall serve as the basis for the preservation component of the six-year highway program and the two-year biennial budget request to the legislature;

(b) A highway maintenance element, establishing service levels for highway maintenance on state-owned highways that meet benchmarks established by the transportation commission. The highway maintenance element must include an estimate of costs for achieving those service levels over twenty years. This element will serve as the basis for the maintenance component of the six-year highway program and the two-year biennial budget request to the legislature;

(c) A capacity and operational improvement element, which shall establish operational objectives, including safety considerations, for moving people and goods on the state highway system, identify current and future capacity, operational, and safety deficiencies, and recommend program funding levels and specific improvements and strategies necessary to achieve the operational objectives. In developing capacity and operational improvement plans the department shall first assess strategies to enhance the operational efficiency of the existing system before recommending system expansion. Strategies to enhance the operational efficiencies include but are not limited to access management, transportation system management, demand management, and high-occupancy vehicle facilities. The capacity and operational improvement element must conform to the state implementation plan for air quality and be consistent with regional transportation plans adopted under chapter 47.80 RCW, and shall serve as the basis for the capacity and operational improvement portions of the six-year highway program and the two-year biennial budget request to the legislature;

~~((c))~~ (d) A scenic and recreational highways element, which shall identify and recommend designation of scenic and recreational highways, provide for enhanced access to scenic, recreational, and cultural resources associated with designated routes, and recommend a variety of management strategies to protect, preserve, and enhance these resources. The department, affected counties, cities, and towns, regional transportation planning organizations, and other state or federal agencies shall jointly develop this element;

~~((d))~~ (e) A paths and trails element, which shall identify the needs of nonmotorized transportation modes on the state transportation systems and provide the basis for the investment of state transportation funds in paths and trails, including funding provided under chapter 47.30 RCW.

(2) The state ferry system plan, which shall guide capital and operating investments in the state ferry system. The plan shall establish service objectives for state ferry routes, forecast travel demand for the various markets served in the system, ~~((and))~~ develop strategies for ferry system investment that consider regional and statewide vehicle and passenger needs, support local land use plans, and assure that ferry services are fully integrated with other transportation services. The plan must provide for maintenance of capital assets. The plan must also provide for preservation of capital assets based on lowest life cycle cost methodologies. The plan shall assess the role of private ferries operating under the authority of the utilities and transportation commission and shall coordinate ferry system capital and operational plans with these private operations. The ferry system plan must be consistent with the regional transportation plans for areas served by the state ferry system, and shall be developed in conjunction with the ferry advisory committees.

**Sec. 414.** RCW 47.06.090 and 1993 c 446 s 9 are each amended to read as follows:

The state-interest component of the statewide multimodal transportation plan shall include an intercity passenger rail plan, which shall analyze existing intercity passenger rail service and recommend improvements to that service under the state passenger rail service program including depot improvements, potential service extensions, and ways to achieve higher train speeds.

For purposes of maintaining and preserving any state-owned component of the state's passenger rail program, the statewide multimodal transportation plan must identify all such assets and provide a preservation plan based on lowest life cycle cost methodologies.

**NEW SECTION. Sec. 415.** A new section is added to chapter 81.112 RCW to read as follows:

As a condition of receiving state funding, a regional transit authority shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the transit authority, and provide a plan for preservation of assets based on lowest life cycle cost methodologies.

**NEW SECTION. Sec. 416.** A new section is added to chapter 36.78 RCW to read as follows:

The board shall establish a standard of good practice for maintenance of transportation system assets. This standard must be implemented by all counties no later than December 31, 2007. The board shall develop a model maintenance management system for use by counties. The board shall develop rules to assist the counties in the implementation of this system. Counties shall annually submit their maintenance plans to the board. The board shall compile the county data regarding maintenance management and annually submit it to the transportation commission or its successor entity.

NEW SECTION. **Sec. 417.** Sections 401 through 404 of this act take effect July 1, 2002.

NEW SECTION. **Sec. 418.** Sections 409 through 412, 415, and 416 of this act are null and void if new transportation revenues do not become law by January 1, 2003.

NEW SECTION. **Sec. 419.** Captions and part headings used in this act are not part of the law.

NEW SECTION. **Sec. 420.** 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 January 28, 2002.

Passed the Senate January 26, 2002.

Approved by the Governor January 30, 2002.

Filed in Office of Secretary of State January 30, 2002.

**CHAPTER 6**

[Senate Bill 6036]

**LOCAL MOTOR VEHICLE EXCISE TAXES**

AN ACT Relating to local motor vehicle excise taxes; creating a new section; repealing RCW 35.58.273, 35.58.274, 35.58.275, 35.58.276, 35.58.277, 35.58.278, 35.58.279, 35.58.2791, and 35.58.2792; providing a retroactive 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 this act to clarify that the legislature, when it enacted Senate Bill No. 6865 during the 2000 legislative session, intended to repeal all motor vehicle excise taxes, including the local motor vehicle excise tax and replace them with a thirty dollar license fee.***

***\*Sec. 1 was vetoed. Sec message at end of chapter.***

NEW SECTION. **Sec. 2.** The following acts or parts of acts are each repealed:

(1) RCW 35.58.273 (Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design—Rules—Sales and use tax on rental cars) and 1998 c 321 s 25, 1992 c 194 s 11, 1991 c 339 s 29, 1991 c 309 s 1, 1990 c 42 s 316, 1987 c 428 s 2, 1979 ex.s. c 175 s 2, & 1969 ex.s. c 255 s 8;

(2) RCW 35.58.274 (Public transportation systems—Motor vehicles exempt from tax) and 1985 c 7 s 100 & 1969 ex.s. c 255 s 9;

(3) RCW 35.58.275 (Public transportation systems—Provisions of motor vehicle excise tax chapter applicable) and 1969 ex.s. c 255 s 10;

(4) RCW 35.58.276 (Public transportation systems—When tax due and payable—Collection) and 1971 ex.s. c 199 s 1 & 1969 ex.s. c 255 s 11;

(5) RCW 35.58.277 (Public transportation systems—Remittance of tax by county auditor) and 1979 c 158 s 91 & 1969 ex.s. c 255 s 12;



(6) RCW 35.58.278 (Public transportation systems—Distribution of tax) and 1975 1st ex.s. c 270 s 2, 1974 ex.s. c 54 s 1, & 1969 ex.s. c 255 s 13;

(7) RCW 35.58.279 (Public transportation systems—Crediting and use of tax revenues) and 1981 c 319 s 3, 1979 ex.s. c 175 s 3, & 1969 ex.s. c 255 s 14;

(8) RCW 35.58.2791 (Public transportation systems—Internal combustion equipment to comply with pollution control standards) and 1969 ex.s. c 255 s 19; and

(9) RCW 35.58.2792 (Public transportation systems—Parking facilities to be in conjunction with system stations or transfer facilities) and 1969 ex.s. c 255 s 20.

**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.

**NEW SECTION. Sec. 4.** This act applies retroactively to January 1, 2000.

Passed the Senate February 8, 2002.

Passed the House February 22, 2002.

Approved by the Governor March 1, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 1, 2002.

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

"I am returning herewith, without my approval as to section 1, Senate Bill No. 6036 entitled:

"AN ACT Relating to local motor vehicle excise taxes;"

Senate Bill No. 6036 repeals certain motor vehicle excise tax statutes that were not expressly repealed in earlier legislation. Section 1 of the bill is an uncodified statement of intent. However, section 1 contains a drafting error that puts it in conflict with the operative portions of the bill. Consequently, the chairs of the Senate and House transportation committees have requested that section 1 be vetoed.

For these reasons, I have vetoed section 1 of Senate Bill No. 6036.

With the exception of section 1, Senate Bill No. 6036 is approved."

## CHAPTER 7

[House Bill 2782]

### ACTUARIAL EXPERIENCE STUDY—IMPLEMENTATION

AN ACT Relating to implementing the results of the 1995-2000 actuarial experience study; adding a new section to chapter 41.45 RCW; repealing RCW 41.45.053; providing an effective 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 41.45 RCW to read as follows:

The basic employer and state contribution rates and plan 2 member contribution rates are changed to reflect the 2000 actuarial valuation, incorporating the 1995-2000 actuarial experience study conducted by the office of the state actuary. The results of the 2000 actuarial valuation shall be adjusted to reflect an April 1, 2002, implementation date.

(1) Beginning April 1, 2002, the following employer contribution rates shall be charged:

- (a) 1.10 percent for the public employees' retirement system; and
- (b) 2.64 percent for the law enforcement officers' and fire fighters' retirement system plan 2.

(2) Beginning April 1, 2002, the basic state contribution rate for the law enforcement officers' and fire fighters' retirement system plan 2 shall be 1.75 percent.

(3) Beginning April 1, 2002, the following employer contribution rates shall be charged:

- (a) 0.96 percent for the school employees' retirement system; and
- (b) 1.05 percent for the teachers' retirement system.

(4) Beginning April 1, 2002, the following member contribution rates shall be charged:

- (a) 0.65 percent for the public employees' retirement system plan 2; and
- (b) 4.39 percent for the law enforcement officers' and fire fighters' retirement system plan 2.

(5) Beginning April 1, 2002, the following member contribution rates shall be charged:

- (a) 0.35 percent for the school employees' retirement system plan 2; and
- (b) 0.15 percent for the teachers' retirement system plan 2.

(6) The contribution rates in this section shall be collected through June 30, 2003.

NEW SECTION. **Sec. 2.** RCW 41.45.053 (Contribution rates—Collected through June 30, 2003) and 2001 2nd sp.s. c 11 s 9 are each repealed.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2002.

Passed the House February 18, 2002.

Passed the Senate March 1, 2002.

Approved by the Governor March 1, 2002.

Filed in Office of Secretary of State March 1, 2002.

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**CHAPTER 8**

[House Bill 1248]

**UNEMPLOYMENT INSURANCE—VICTIM'S BENEFITS**

AN ACT Relating to allowing victims of domestic violence or stalking to receive unemployment insurance benefits; and amending RCW 50.20.050, 50.20.100, 50.20.240, and 50.29.020.

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

**Sec. 1.** RCW 50.20.050 and 2000 c 2 s 12 are each amended to read as follows:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(a) The duration of the work;  
(b) The extent of direction and control by the employer over the work; and  
(c) The level of skill required for the work in light of the individual's training and experience.

(2) An individual shall not be considered to have left work voluntarily without good cause when:

(a) He or she has left work to accept a bona fide offer of bona fide work as described in subsection (1) of this section;

(b) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; ~~(or)~~

(c) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or

(d) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(3) In determining under this section whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the

individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(4) Subsections (1) and (3) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by subsection (2)(b) or (c) of this section.

**Sec. 2.** RCW 50.20.100 and 1989 c 380 s 80 are each amended to read as follows:

(1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform (~~and for individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets the conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual~~). In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

(2) For individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

(3) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050(2)(d), an evaluation of the suitability of the work

must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking.

**Sec. 3.** RCW 50.20.240 and 1998 c 161 s 4 are each amended to read as follows:

To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, effective July 1, 1999, the employment security department shall implement a job search monitoring program. Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050(2)(d), and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title must provide evidence of seeking work, as directed by the commissioner or ~~((the))~~ the commissioner's agents, for each week beyond five in which a claim is filed. The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

**Sec. 4.** RCW 50.29.020 and 2000 c 2 s 3 are each amended to read as follows:

(1) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(d) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

~~((f))~~ (g) Benefits paid under RCW 50.22.150 shall not be charged to the experience rating account of any contribution paying employer.

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

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

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

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

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

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

Passed the House February 16, 2002.  
 Passed the Senate March 5, 2002.  
 Approved by the Governor March 12, 2002.  
 Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 9

[House Bill 2370]

### COUNTY ROAD ENGINEERS

AN ACT Relating to county road engineers; and amending RCW 36.80.010.

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

**Sec. 1.** RCW 36.80.010 and 1997 c 147 s 1 are each amended to read as follows:

~~((The county legislative authority of each county with a population of eight thousand or more shall employ a full-time county road engineer.))~~ The county legislative authority of each ((~~other~~)) county shall employ a county road engineer on either a full-time or part-time basis, or may contract with another county for the engineering services of a county road engineer from such other county.

Passed the House February 12, 2002.  
 Passed the Senate March 2, 2002.  
 Approved by the Governor March 12, 2002.  
 Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 10

[Substitute House Bill 2381]

### TRAFFICKING OF PERSONS

AN ACT Relating to the trafficking of persons; amending RCW 7.68.020; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that:

- (a) The trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today;
- (b) At least seven hundred thousand persons annually, primarily women and children, are trafficked within or across international borders;
- (c) Approximately fifty thousand women and children are trafficked into the United States each year;
- (d) Trafficking in persons is not limited to the sex industry, and includes forced labor with significant violations of labor, public health, and human rights standards worldwide;
- (e) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin; and

(f) There are not adequate services and facilities to meet the needs of trafficking victims regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(2) The legislature declares that the purpose of this act is to provide a coordinated, humane response for victims of human trafficking through a review of existing programs and clarification of existing options for such victims.

**NEW SECTION. Sec. 2.** (1) There is created the Washington state task force against the trafficking of persons.

(2) The task force shall consist of the following members:

(a) The director of the office of community development, or the director's designee;

(b) The secretary of the department of health, or the secretary's designee;

(c) The secretary of the department of social and health services, or the secretary's designee;

(d) The director of the department of labor and industries, or the director's designee;

(e) The commissioner of the employment security department, or the commissioner's designee;

(f) Nine members, selected by the director of the office of community development, that represent public and private sector organizations that provide assistance to persons who are victims of trafficking.

(3) The task force shall be chaired by the director of the office of community development, or the director's designee.

(4) The task force shall carry out the following activities:

(a) Measure and evaluate the progress of the state in trafficking prevention activities;

(b) Identify available federal, state, and local programs that provide services to victims of trafficking that include, but are not limited to health care, human services, housing, education, legal assistance, job training or preparation, interpreting services, English as a second language classes, and victim's compensation; and

(c) Make recommendations on methods to provide a coordinated system of support and assistance to persons who are victims of trafficking.

(5) The task force shall report its findings and recommendations to the governor and legislature by November 30, 2002.

(6) The office of community development shall provide necessary administrative and clerical support to the task force.

(7) The members of the task force shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(8) The task force expires March 1, 2003.

**Sec. 3.** RCW 7.68.020 and 2001 c 136 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: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state(~~(-or)~~); (c) 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 law(;) or (d) 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))~~ (i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless:

~~((i))~~ (A) The injury or death was intentionally inflicted;

~~((ii))~~ (B) The operation thereof was part of the commission of another non-vehicular criminal act as defined in this section;

~~((iii))~~ (C) 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))~~ (D) The injury or death was caused by a driver in violation of RCW 46.61.502;

~~((b))~~ (ii) 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))~~ (d)(i)(C) of this subsection;

~~((c))~~ (iii) 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))~~ (iv) 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 or her 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))~~ worker" 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 13, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 11

[House Bill 2493]

### VOLUNTEER FIRE FIGHTERS

AN ACT Relating to volunteer fire fighters; and amending RCW 41.24.050.

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

**Sec. 1.** RCW 41.24.050 and 1989 c 91 s 11 are each amended to read as follows:

~~((Each municipal corporation shall by appropriate legislation limit the membership of its volunteer fire department to not to exceed twenty-five fire fighters for each one thousand population or fraction thereof. PROVIDED, That any fire department maintaining and operating an emergency first aid and ambulance service requiring emergency medical training under chapter 18.73 RCW shall be permitted to increase its membership by the number of fire fighters obtaining and maintaining such qualification. PROVIDED FURTHER, That))~~ No person serving as an emergency medical technician or first aid vehicle operator under chapter 18.73 RCW shall be permitted to join the law enforcement officers' and fire fighters' retirement system solely on the basis of such service(~~(= PROVIDED FURTHER, That))~~). In no case shall the membership of any fire

department coming under the provisions of this chapter be limited to less than fifteen fire fighters.

Passed the House February 12, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 12

[Substitute House Bill 2592]

### COMMUNITY REVITALIZATION FINANCING

AN ACT Relating to community revitalization financing under chapter 39.89 RCW; amending RCW 39.89.030 and 39.89.040; adding a new section to chapter 39.89 RCW; and repealing RCW 39.89.901.

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

**Sec. 1.** RCW 39.89.030 and 2001 c 212 s 3 are each amended to read as follows:

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 RCW 39.89.050(1); 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~~) agree to participate in the community revitalization financing of the project under chapter 212, Laws of 2001, for the project to proceed. Approval by the fire protection district shall be considered as part of the required participation by taxing districts under subsection (4) of this section.

**Sec. 2.** RCW 39.89.040 and 2001 c 212 s 4 are each amended to read as follows:

(1) 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.

(2) Public improvements that are constructed by a private developer must meet all applicable state and local laws.

NEW SECTION. Sec. 3. A new section is added to chapter 39.89 RCW to read as follows:

(1) A local government may issue revenue bonds to fund revenue-generating public improvements, or portions of public improvements, that are located within an increment area and that it is authorized to provide or operate. Whenever revenue bonds are to be issued, the legislative authority of the local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the local government may obligate the local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued pursuant to this section are not an indebtedness of the local government issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued pursuant to this section shall not have any claim against the local government arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created pursuant to RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued pursuant to this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The legislative authority of the local government shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue

bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued.

**NEW SECTION. Sec. 4.** RCW 39.89.901 (Expiration of chapter) and 2001 c 212 s 29 are each repealed.

Passed the House February 14, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 13

[Substitute Senate Bill 5433]

### ALTERNATIVE REPRODUCTIVE MEDICAL TECHNOLOGY—PARENT-CHILD RELATIONSHIP

AN ACT Relating to establishment of parent and child relationship for children born through alternative reproductive medical technology; and amending RCW 26.26.030 and 26.26.050.

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

**Sec. 1.** RCW 26.26.030 and 1985 c 7 s 86 are each amended to read as follows:

The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this chapter;

(2) the natural father may be established under this chapter;

(3) an adoptive parent may be established by proof of adoption or under the provisions of chapter 26.33 RCW;

(4) a mother or father may be established under this chapter by an affidavit and physician's certificate in a form prescribed by the department of health wherein the sperm donor, donor of ovum, or surrogate gestation carrier sets forth his or her intent to be legally bound as the parent of a child or children born through alternative reproductive medical technology by filing the affidavit and physician's certificate with the registrar of vital statistics within ten days after the date of the child's birth pursuant to RCW 26.26.050

**Sec. 2.** RCW 26.26.050 and 1975-76 2nd ex.s. c 42 s 6 are each amended to read as follows:

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the registrar of vital statistics, where it shall be kept confidential and in a sealed file.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement, including the affidavit and certification referenced in RCW 26.26.030, with the registrar of vital statistics, where it shall be kept confidential and in a sealed file.

(3) The donor of ovum provided to a licensed physician for use in the alternative reproductive medical technology process of attempting to achieve a pregnancy in a woman other than the donor is treated in law as if she were not the natural mother of a child thereafter conceived and born unless the donor and the woman who gives birth to a child as a result of the alternative reproductive medical technology procedures agree in writing that the donor is to be a parent. A woman who gives birth to a child conceived through alternative reproductive medical technology procedures under the supervision and with the assistance of a licensed physician is treated in law as if she were the natural mother of the child unless an agreement in writing signed by an ovum donor and the woman giving birth to the child states otherwise. An agreement pursuant to this section must be in writing and signed by the ovum donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the ovum harvest, identify the subsequent medical procedures undertaken, and identify the intended parents. The agreement, including the affidavit and certification referenced in RCW 26.26.030, must be filed with the registrar of vital statistics, where it must be kept confidential and in a sealed file.

(4) The department of health shall, upon request, issue a birth certificate for any child born as a result of an alternative reproductive medical technology procedure indicating the legal parentage of such child as intended by any agreement filed with the registrar of vital statistics pursuant to subsection (1), (2), or (3) of this section.

(5) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child or mother and child relationship. All papers and records pertaining to the ((insemination)) alternative reproductive medical technology procedures, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown.

Passed the Senate January 30, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 14

[Engrossed Senate Bill 5852]

## RACIAL PROFILING

AN ACT Relating to reporting on issues pertaining to racial profiling; adding new sections to chapter 43.101 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature declares that racial profiling is the illegal use of race or ethnicity as a factor in deciding to stop and question, take enforcement action, arrest, or search a person or vehicle with or without a legal basis under the United States Constitution or Washington state Constitution.

(2) The legislature recognizes that the president of the United States has issued an executive order stating that stopping or searching individuals on the basis of race is not an effective law enforcement policy, that it is inconsistent with democratic ideals, especially the commitment to equal protection under the law for all persons, and that it is neither legitimate nor defensible as a strategy for public protection. The order also instructs the law enforcement agencies within the departments of justice, treasury, and interior to collect race, ethnicity, and gender data on the people they stop or arrest.

(3) The legislature finds that the Washington state patrol has been in the process of collecting data on traffic stops and analyzing the data to determine if the patrol has any areas in its enforcement of traffic laws where minorities are being treated in a discriminatory manner. The legislature further finds that the Washington association of sheriffs and police chiefs has recently passed a resolution condemning racial profiling and has reaffirmed local law enforcement agencies' commitment to ensuring the public safety and the protection of civil liberties for all persons. The association also restated its goal of implementing policing procedures that are fair, equitable, and constitutional.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.101 RCW to read as follows:

(1) Local law enforcement agencies shall comply with the recommendations of the Washington association of sheriffs and police chiefs regarding racial profiling, as set forth under (a) through (f) of this subsection. Local law enforcement agencies shall:

(a) Adopt a written policy designed to condemn and prevent racial profiling;

(b) Review and audit their existing procedures, practices, and training to ensure that they do not enable or foster the practice of racial profiling;

(c) Continue training to address the issues related to racial profiling. Officers should be trained in how to better interact with persons they stop so that legitimate police actions are not misperceived as racial profiling;

(d) Ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling. The process must be accessible to citizens and must be fair. Officers found to be engaged in racial profiling must

be held accountable through the appropriate disciplinary procedures within each department;

(e) Work with the minority groups in their community to appropriately address the issue of racial profiling; and

(f) Within fiscal constraints, collect demographic data on traffic stops and analyze that data to ensure that racial profiling is not occurring.

(2) The Washington association of sheriffs and police chiefs shall coordinate with the criminal justice training commission to ensure that issues related to racial profiling are addressed in basic law enforcement training and offered in regional training for in-service law enforcement officers at all levels.

(3) Local law enforcement agencies shall report all information required under this section to the Washington association of sheriffs and police chiefs.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.101 RCW to read as follows:

The Washington association of sheriffs and police chiefs, in cooperation with the criminal justice training commission, shall report to the legislature by December 31, 2002, and each December 31st thereafter, on the progress and accomplishments of each local law enforcement agency in the state in meeting the requirements and goals set forth in section 2 of this act.

Passed the Senate January 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

**CHAPTER 15**

[Senate Bill 6061]

**MUNICIPAL FIREMEN'S PENSION BOARD—QUARTERLY MEETINGS**

AN ACT Relating to requiring quarterly meetings of municipal firemen's pension boards; and amending RCW 41.16.030.

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

**Sec. 1.** RCW 41.16.030 and 1947 c 91 s 3 are each amended to read as follows:

The board shall meet at least once (~~monthly~~) quarterly, the date to be fixed by regulation of the board, at such other regular times as may be fixed by a regulation of the board; and at any time upon call of the chairman, of which due advance notice shall be given the other members of the board.

Passed the Senate February 13, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.



## CHAPTER 16

[Substitute Senate Bill 6240]  
VOTING RIGHTS—FELONS

AN ACT Relating to notice to felons regarding restoration of voting rights; amending RCW 9.94A.637 and 9.96.050; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge.

**Sec. 2.** RCW 9.94A.637 and 2000 c 119 s 3 are each amended to read as follows:

(1) When an offender has completed ~~((the))~~ all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary ~~((of the department))~~ or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) The court shall send a copy of every signed certificate of discharge to the auditor for the county in which the court resides and to the department. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

~~((3))~~ (4) Except as provided in subsection ~~((4))~~ (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

~~((4))~~ (5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from

having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

~~((5))~~ (6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

**Sec. 3.** RCW 9.96.050 and 1993 c 140 s 4 are each amended to read as follows:

When a prisoner on parole has performed ~~((the))~~ all obligations of his or her release, including any and all legal financial obligations, for such time as shall satisfy the indeterminate sentence review board that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the prisoner. The certificate of discharge shall be issued to the offender in person or by mail to the prisoner's last known address.

The board shall send a copy of every signed certificate of discharge to the auditor for the county in which the offender was sentenced and to the department of corrections. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge the date of discharge, and the date of conviction and offense.

The board retains the jurisdiction to issue a certificate of discharge after the expiration of the prisoner's or parolee's maximum statutory sentence. If not earlier granted, the board shall make a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years. Such discharge, regardless of when issued, shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certification of discharge shall so state. This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person.

Passed the Senate February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

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## CHAPTER 17

[Substitute Senate Bill 6241]

### CHRISTMAS TREES

AN ACT Relating to Christmas trees; and reenacting and amending RCW 76.09.020.

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

**Sec. 1.** RCW 76.09.020 and 2001 c 102 s 1 and 2001 c 97 s 2 are each reenacted and 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. 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) "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, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(13) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(14) "Application" means the application required pursuant to RCW 76.09.050.

(15) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(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.

(17) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(18) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(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.

(20) "Board" means the forest practices board created in RCW 76.09.030.

(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.

(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.

Passed the Senate February 12, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 18

[Senate Bill 6242]

### NONPROBATE ASSETS—BENEFICIARY DESIGNATION

AN ACT Relating to nonprobate asset beneficiary designation; and amending RCW 11.07.010.

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

**Sec. 1.** RCW 11.07.010 and 1998 c 292 s 118 are each amended to read as follows:

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the

decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person’s death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Passed the Senate February 6, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

**CHAPTER 19**

[Senate Bill 6287]

**SEXUALLY VIOLENT PREDATORS—DEPARTMENT OF SOCIAL AND HEALTH SERVICES’ JURISDICTION**

AN ACT Relating to the status of persons who commit criminal offenses while civilly detained or committed under chapter 71.09 RCW; and adding a new section to chapter 71.09 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 71.09 RCW to read as follows:

A person subject to court order under the provisions of this chapter who is thereafter convicted of a criminal offense remains under the jurisdiction of the department following: (1) Completion of the criminal sentence; or (2) release from confinement in a state or local correctional facility, and shall be returned to the custody of the department.

This section does not apply to persons subject to a court order under the provisions of this chapter who are thereafter sentenced to life without the possibility of release.

Passed the Senate February 13, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.



**CHAPTER 20**

[Substitute Senate Bill 6313]

**DERELICT FISHING GEAR**

AN ACT Relating to derelict fishing gear; adding new sections to chapter 77.12 RCW; adding a new section to chapter 77.55 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 fishing gear that is lost or abandoned may continue to catch marine organisms long after the gear is lost. The purpose of this act is to develop safe, effective methods to remove derelict fishing gear, eliminate regulatory barriers to gear removal, and discourage future losses of fishing gear.

**NEW SECTION. Sec. 2.** A new section is added to chapter 77.12 RCW to read as follows:

(1) As used in this section and section 3 of this act, "derelict fishing gear" includes lost or abandoned fishing nets, fishing lines, crab pots, shrimp pots, and other commercial and recreational fishing equipment. The term does not include lost or abandoned vessels.

(2) The department, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties, must publish guidelines for the safe removal and disposal of derelict fishing gear. The guidelines must be completed by August 31, 2002, and made available to any person interested in derelict fishing gear removal.

(3) Derelict fishing gear removal conducted in accordance with the guidelines prepared in subsection (2) of this section is not subject to permitting under RCW 77.55.100.

**NEW SECTION. Sec. 3.** A new section is added to chapter 77.12 RCW to read as follows:

(1) The department, in consultation with the Northwest straits commission, the department of natural resources, and other interested parties, must create and maintain a data base of known derelict fishing gear, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

(3) The department, in consultation with fishing industry groups and tribal comanagers, must evaluate methods to reduce future losses of fishing gear and report the results of this evaluation to the appropriate legislative committees by January 1, 2003.

**NEW SECTION. Sec. 4.** A new section is added to chapter 77.55 RCW to read as follows:

The removal of derelict fishing gear does not require written approval under this chapter if the gear is removed according to the guidelines described in section 2 of this act.

Passed the Senate February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

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**CHAPTER 21**

[Senate Bill 6324]

**VOTER REGISTRATION DATA BASE**

AN ACT Relating to a statewide voter registration data base; adding a new section to chapter 29.04 RCW; creating a new section; providing an effective date; 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 recognizes that national task forces studying election issues have identified statewide voter registration systems as important tools for protecting the integrity of elections, and it is likely that federal funds will be made available for states that employ statewide voter registration systems. Therefore, the legislature finds a need for the state of Washington to begin the process of creating such a system.

**NEW SECTION. Sec. 2.** A new section is added to chapter 29.04 RCW to read as follows:

(1) The office of the secretary of state shall work in conjunction with the county auditors of the state of Washington to initiate the creation of a statewide voter registration data base. The secretary of state shall identify a group of voter registration experts whose responsibility will be to work on a design for the voter registration data base system. The secretary of state shall report back the findings of this group to the legislature no later than February 1, 2003.

(2) Among the intended goals the voter registration data base must be designed to accomplish at a minimum, are the following:

- (a) Identify duplicate voter registrations;
- (b) Identify suspected duplicate voters;
- (c) Screen against the department of corrections data base to aid in the cancellation of voter registration of felons;
- (d) Provide up-to-date signatures of voters for the purposes of initiative signature checking;
- (e) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;
- (f) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities, if sufficient funds are available;

(g) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses;

(h) Ensure that each county shall maintain legal control of the registration records for that county.

**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 May 1, 2002.

**NEW SECTION. Sec. 4.** This act expires January 1, 2005.

Passed the Senate February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 22

[Engrossed Substitute Senate Bill 6326]

### INSURANCE COMMISSIONER—REPORTS

AN ACT Relating to filing reports with the insurance commissioner; and amending RCW 48.05.380.

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

**Sec. 1.** RCW 48.05.380 and 1986 c 148 s 1 are each amended to read as follows:

The insurance commissioner shall (~~promulgate~~) adopt rules requiring insurers who are authorized to write property and casualty insurance in the state of Washington to record and report their Washington state loss and expense experiences and other data, as required by RCW 48.05.390. These rules may not require a report to be submitted by any insurer that has no data or experience to report.

Passed the Senate February 16, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 23

[Senate Bill 6328]

### CHERRY HARVEST TEMPORARY LABOR CAMP

AN ACT Relating to the definition of cherry harvest temporary labor camp; and amending RCW 70.114A.110.

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

**Sec. 1.** RCW 70.114A.110 and 1999 c 374 s 5 are each amended to read as follows:

(1) The department and the department of labor and industries are directed to engage in joint rule making to establish standards for cherry harvest temporary labor camps. These standards may include some variation from standards that are necessary for longer occupancies, provided they are as effective as the standards adopted under the Washington industrial safety and health act, chapter 49.17 RCW. As used in this section "cherry harvest temporary labor camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers for ~~((no more than twenty-one days in any one calendar year. Temporary labor camps licensed under this section may be occupied for more than twenty-one days if the following conditions are met: (a) The secretary or an authorized representative and the local health jurisdiction determine that the health and safety interests of the worker occupants would be better served by extending the occupancy than closing the camp at the end of the initial twenty-one day period; and (b) the operator requests an extension at least three days prior to the expiration of the initial twenty-one day period. The extended occupancy shall not exceed seven days))~~ their use while employed for the harvest of cherries. The housing and facilities may be occupied by agricultural employees for a period not to exceed one week before the commencement through one week following the conclusion of the cherry crop harvest within the state.

(2) Facilities licensed under rules adopted under this section may not be used to provide housing for agricultural employees who are nonimmigrant aliens admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a)).

(3) This section has no application to temporary worker housing constructed in conformance with codes listed in RCW 19.27.031 or 70.114A.081.

Passed the Senate February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 24

[Substitute Senate Bill 6329]

### EMISSIONS INSPECTIONS—HYBRID VEHICLES

AN ACT Relating to exempting certain hybrid vehicles from emission control inspection requirements; and amending RCW 46.16.015.

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

**Sec. 1.** RCW 46.16.015 and 1998 c 342 s 6 are each amended to read as follows:

(1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle or change the registered owner of a licensed vehicle, for any vehicle that is required to be inspected under chapter 70.120 RCW,

unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW; or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within six months of the date of application for the vehicle license or license renewal. Certificates for fleet or owner tested diesel vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Farm vehicles as defined in RCW 46.04.181;

(g) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW;

(h) Classes of motor vehicles exempted by the director of the department of ecology;

(i) Collector cars as identified by the department of licensing under RCW 46.16.305(1); ((or))

(j) Beginning January 1, 2000, vehicles that are less than five years old or more than twenty-five years old; or

(k) Hybrid motor vehicles that obtain a rating by the environmental protection agency of at least fifty miles per gallon of gas during city driving. For purposes of this section, a hybrid motor vehicle is one that uses propulsion units powered by both electricity and gas.

The provisions of (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of ecology shall provide information to motor vehicle owners regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas. In addition the department of ecology shall provide information to motor vehicle owners on the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution. The department of licensing shall send to all registered motor vehicle owners

affected by the emission testing program notice that they must have an emission test to renew their registration.

Passed the Senate February 16, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

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**CHAPTER 25**

[Senate Bill 6341]

**SEX OFFENDER REGISTRATION—JUDICIAL REVIEW**

AN ACT Relating to amending the judicial review of sex offender registration to comply with federal funding requirements; amending RCW 9A.44.140; providing an expiration date; and declaring an emergency.

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

**Sec. 1.** RCW 9A.44.140 and 2001 c 170 s 2 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) Except as provided in (b) of this subsection, 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) The court may not relieve a person of the duty to register if the person has been convicted of one aggravated offense or more than one sexually violent offense, as defined in subsection (5) of this section, and the offense or offenses were committed on or after the effective date of this act.

(c) Any person subject to (b)((††)) 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))~~) (b) of this section. This provision shall apply to convictions for crimes committed on or after July 22, 2001.

(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.835 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.835 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.835 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.

(7) Nothing in RCW 9.94A.637 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.

NEW SECTION. **Sec. 2.** RCW 9A.44.140(3)(b)(ii) expires July 1, 2012.

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 February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

**CHAPTER 26**

[Senate Bill 6374]

**RETIREMENT SYSTEMS—TECHNICAL CORRECTIONS**

AN ACT Relating to correcting errors and oversights in certain retirement system statutes; amending RCW 28A.405.900, 41.45.010, 41.45.050, 41.35.700, 41.35.510, and 41.50.790; reenacting and amending RCW 41.45.020; reenacting RCW 41.45.060; and repealing 2001 2nd sp.s. c 10 s 12.

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

**Sec. 1.** RCW 28A.405.900 and 2001 2nd sp.s. c 10 s 2 are each amended to read as follows:

Certificated employees subject to the provisions of RCW 28A.310.250, (~~28A.405.010 through 28A.405.240, 28A.405.400 through 28A.405.410, 28A.415.250, and 28A.405.900~~) 28A.405.100, 28A.405.210, and 28A.405.220 shall not include those certificated employees hired to replace certificated employees who have been granted sabbatical, regular, or other leave by school districts, and shall not include retirees hired for postretirement employment under the provisions of chapter 10, Laws of 2001 2nd sp. sess.

It is not the intention of the legislature that this section apply to any regularly hired certificated employee or that the legal or constitutional rights of such employee be limited, abridged, or abrogated.

**Sec. 2.** RCW 41.45.060 and 2001 2nd sp.s. c 11 s 10 and 2001 c 329 s 10 are each reenacted to read as follows:

(1) The state actuary shall provide actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted by the council under RCW 41.45.030 or 41.45.035.

(2) Not later than September 30, 2002, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique

included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

- (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system;
- (b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system to be used in the ensuing biennial period; and
- (c) A basic employer contribution rate for the school employees' retirement system for funding both that system and the public employees' retirement system plan 1.

The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1 not later than June 30, 2024, except as provided in subsection (5) of this section;

(b) To also continue to fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, and the law enforcement officers' and fire fighters' retirement system plan 2 in accordance with RCW 41.45.061, 41.45.067, and this section; and

(c) For the law enforcement officers' and fire fighters' system plan 2 the rate charged to employers, except as provided in RCW 41.26.450, shall be thirty percent of the cost of the retirement system and the rate charged to the state shall be twenty percent of the cost of the retirement system.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 employer contribution rate and a Washington state patrol retirement system contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(6) The director of the department of retirement systems shall collect the rates established in RCW 41.45.053 through June 30, 2003. Thereafter, the director shall collect those rates adopted by the council. The rates established in RCW 41.45.053, or by the council, shall be subject to revision by the council.

**Sec. 3.** RCW 41.45.010 and 2001 2nd sp.s. c 11 s 2 are each amended to read as follows:

It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system,

chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement systems, chapter((s)) 41.26 ((and 41.26A)) RCW; the school employees' retirement system, chapter 41.35 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The legislature finds that the funding status of the state retirement systems has improved dramatically since 1989. Because of the big reduction in unfunded pension liabilities, it is now prudent to adjust the long-term economic assumptions that are used in the actuarial studies conducted by the state actuary. The legislature finds that it is reasonable to increase the salary growth assumption in light of Initiative Measure No. 732, to increase the investment return assumption in light of the asset allocation policies and historical returns of the state investment board, and to reestablish June 30, 2024, as the target date to achieve full funding of all liabilities in the public employees' retirement system plan 1 (~~and~~), the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, and the law enforcement officers' and fire fighters' retirement system plan 2 as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan 1 (~~and~~), the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1, not later than June 30, 2024;

~~(3) ((To ensure the actuarial funding of the restated law enforcement officers' and fire fighters' retirement system defined benefit plan, and provide for additional state funding if unfunded liabilities accrue in the future;~~

~~—(4))~~ To establish predictable long-term employer contribution rates which will remain a relatively constant proportion of the future state budgets; and

~~((5))~~ (4) To fund, to the extent feasible, benefit increases for plan 1 members and all benefits for plan 2 and 3 members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service.

**Sec. 4.** RCW 41.45.020 and 2001 2nd sp.s. c 11 s 4 and 2001 2nd sp.s. c 11 s 3 are each reenacted and amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan 1" and "law enforcement officers' and fire fighters' retirement system plan 2" means the benefits and funding provisions under chapter 41.26 RCW.

(4) (~~"Restated law enforcement officers' and fire fighters' retirement system defined benefit plan"~~ means the benefits and funding provisions under chapter 41.26A RCW.

—(5)) "Public employees' retirement system plan 1," "public employees' retirement system plan 2," and "public employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.40 RCW.

((6)) (5) "Teachers' retirement system plan 1," "teachers' retirement system plan 2," and "teachers' retirement system plan 3" mean the benefits and funding provisions under chapter 41.32 RCW.

((7)) (6) "School employees' retirement system plan 2" and "school employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.35 RCW.

((8)) (7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

((9)) (8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

((10)) (9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

((11)) (10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

((12)) (11) "Classified employee" means a member of the Washington school employees' retirement system plan 2 or plan 3 as defined in RCW 41.35.010.

((13)) (12) "Teacher" means a member of the teachers' retirement system as defined in RCW 41.32.010(15).

**Sec. 5.** RCW 41.45.050 and 2001 2nd sp.s. c 11 s 8 are each amended to read as follows:

(1) Employers of members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060, 41.45.053, and 41.45.070.

(2) The state shall make contributions to the law enforcement officers' and fire fighters' retirement system plan 2 based on the rates established in RCW 41.45.060, 41.45.053, and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) (~~The state shall ensure the systematic actuarial funding of the restated law enforcement officers' and fire fighters' retirement system defined benefit plan in the manner provided by chapter 41.26A RCW.~~

—(4)) The department shall bill employers, and the state shall make contributions to the law enforcement officers' and fire fighters' retirement system plan 2, using the combined rates established in RCW 41.45.060, 41.45.053, and 41.45.070 regardless of the level of appropriation provided in the biennial budget.

Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

((5)) (4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the public employees' retirement system combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the public employees' retirement system combined plan 2 and plan 3 employer contribution shall first be deposited in the public employees' retirement system combined plan 2 and plan 3 fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund.

((6)) (5) The contributions received for the teachers' retirement system shall be allocated between the plan 1 fund and the combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the combined plan 2 and plan 3 employer contribution shall first be deposited in the combined plan 2 and plan 3 fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan 1 fund.

((7)) (6) The contributions received for the school employees' retirement system shall be allocated between the public employees' retirement system plan 1 fund and the school employees' retirement system combined plan 2 and plan 3 fund as follows: The contributions necessary to fully fund the combined plan 2 and plan 3 employer contribution shall first be deposited in the combined plan 2 and plan 3 fund. All remaining school employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan 1 fund.

((8)) (7) The contributions received for the law enforcement officers' and fire fighters' retirement system plan 2 shall be deposited in the law enforcement officers' and fire fighters' retirement system plan 2 fund.

**Sec. 6.** RCW 41.35.700 and 1998 c 341 s 211 are each amended to read as follows:

(1) Any member who elects to transfer to plan 3 and has eligible unreturned withdrawn contributions in plan 2, may restore such contributions under the provisions of RCW ((41.40.750)) 41.35.500 with interest as determined by the department. The restored plan 2 service credit will be automatically transferred to plan 3. Restoration payments will be transferred to the member account in plan 3. If the member fails to meet the time limitations of RCW ((41.40.750)) 41.35.500, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan 2 service credit will be automatically transferred to plan 3. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan 3 may purchase plan 2 service credit under RCW ((41.40.750)) 41.35.500. Purchased plan 2 service credit will be automatically transferred to plan 3. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan 3 and

shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW ((41.40.750)) 41.35.500, they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan 2 service credit will be automatically transferred to plan 3. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

**Sec. 7.** RCW 41.35.510 and 1998 c 341 s 114 are each amended to read as follows:

(1) Every plan 2 member employed by an employer in an eligible position has the option to make an irrevocable transfer to plan 3.

(2) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(3) Any plan 2 member who wishes to transfer to plan 3 after February 28, 2001, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) The accumulated contributions in plan 2, less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075((~~2~~)) (4), except that interest earned on all such contributions shall be transferred to the member's account.

(5) The legislature reserves the right to discontinue the right to transfer under this section.

(6) Anyone previously retired from plan 2 is prohibited from transferring to plan 3.

**Sec. 8.** RCW 41.50.790 and 1998 c 341 s 514 are each amended to read as follows:

(1) The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, ((or)) 41.40.660, or 41.40.845 if the department has been served by registered or certified mail with a dissolution order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When . . . . . (the obligor) applies for retirement the department shall designate . . . . . (the obligee) as survivor beneficiary with a . . . . . survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

(i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;

(ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;

(iii) Contain a provision clearly identifying the alternate payee or payees; and

(iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before June 6, 1996, only if the order:



- (a) Specifically directs the member or department to make such selection;
- (b) Specifies the survivor option to be selected; and
- (c) The member retires after June 6, 1996.

**NEW SECTION.** Sec. 9. 2001 2nd sp.s. c 10 s 12 is repealed.

Passed the Senate February 15, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 27

[Senate Bill 6375]

### RETIREMENT SYSTEMS—VETERANS

AN ACT Relating to conforming the Washington state retirement systems to federal requirements on veterans; and amending RCW 41.04.005, 41.40.170, and 43.43.260.

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

**Sec. I.** RCW 41.04.005 and 1999 c 65 s 1 are each amended to read as follows:

(1) As used in RCW 41.04.005, 41.16.220, and 41.20.050 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.04.010, 41.16.220, 41.20.050, 41.40.170, 73.04.110, or 73.08.080 has received an honorable discharge or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, from December 7, 1941, to December 31, 1946; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, to December 31, 1946; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era(~~(, which was)~~) means:

(i) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

(ii) The period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; and Bosnia, Operation Joint Endeavor.

**Sec. 2.** RCW 41.40.170 and 1991 c 35 s 78 are each amended to read as follows:

(1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005(~~as now or hereafter amended. AND PROVIDED FURTHER, That in no instance, described in this section, shall military service be credited to any member who is receiving full military retirement benefits pursuant to Title 10 United States Code~~)).

**Sec. 3.** RCW 43.43.260 and 2001 c 329 s 4 are each amended to read as follows:

Upon retirement from service as provided in RCW 43.43.250, a member shall be granted a retirement allowance which shall consist of:

(1) A prior service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of prior service rendered by the member.

(2) A current service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of service rendered while a member of the retirement system.

(3)(a) Any member commissioned prior to January 1, 2003, with twenty-five years service in the Washington state patrol may have the member's service in the armed forces credited as a member whether or not the individual left the employ of the Washington state patrol to enter such armed forces: PROVIDED, That in no instance shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance, a member must restore all withdrawn accumulated contributions, which restoration must be completed on the date of the member's retirement, or as provided under RCW 43.43.130, whichever occurs first: AND PROVIDED FURTHER, That this section shall not apply to any individual, not a veteran within the meaning of RCW 41.06.150(~~as now or hereafter amended. AND PROVIDED FURTHER, That in no instance shall military service be credited to any member who is receiving full military retirement benefits pursuant to Title 10 United States Code, as now or hereafter amended~~)).

(b) A member who leaves the Washington state patrol to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(i) The member qualifies for service credit under this subsection if:

(A) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(B) The member makes the employee contributions required under RCW 41.45.0631 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(C) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(ii) Upon receipt of member contributions under (b)(i)(B) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 for the period of military service, plus interest as determined by the department.

(iii) The contributions required under (b)(i)(B) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(4) In no event shall the total retirement benefits from subsections (1), (2), and (3) of this section, of any member exceed seventy-five percent of the member's average final salary.

(5) Beginning July 1, 2001, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

- (a) The original dollar amount of the retirement allowance;
- (b) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";
- (c) The index for the calendar year prior to the date of determination, to be known as "index B"; and
- (d) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

- (i) Produce a retirement allowance which is lower than the original retirement allowance;
- (ii) Exceed three percent in the initial annual adjustment; or
- (iii) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index for the Seattle-Tacoma-Bremerton Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

The provisions of this section shall apply to all members presently retired and to all members who shall retire in the future.

Passed the Senate February 15, 2002.  
 Passed the House March 5, 2002.  
 Approved by the Governor March 12, 2002.  
 Filed in Office of Secretary of State March 12, 2002.

**CHAPTER 28**

[Senate Bill 6378]

**RETIREMENT SYSTEMS—LAW ENFORCEMENT MEMBERS—LEAVES OF ABSENCE**

AN ACT Relating to part-time leaves of absence for law enforcement members of the law enforcement officers' and fire fighters' retirement system plan 2; and amending RCW 41.26.520.

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

**Sec. 1.** RCW 41.26.520 and 2000 c 247 s 1105 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation

paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection ~~((6))~~ (7) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) A law enforcement member may be authorized by an employer to work part time and to go on a part-time leave of absence. During a part-time leave of absence a member is prohibited from any other employment with their employer. A member is eligible to receive credit for any portion of service credit not earned during a month of part-time leave of absence if the member makes the employer, member, and state contributions, plus interest, as determined by the department for the period of the authorized leave within five years of resumption of full-time service or prior to retirement whichever comes sooner. Any service credit purchased for a part-time leave of absence is included in the two-year maximum provided in subsection (3) of this section.

(5) If a member fails to meet the time limitations of subsection (3) or (4) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

~~((5))~~ (6) For the purpose of subsection (3) or (4) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.45.060, 41.45.061, and 41.45.067. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

~~((6))~~ (7) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member’s honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.45.060, 41.45.061, and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member’s honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall establish the member’s service credit and shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

~~((7))~~ (8) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence.

Passed the Senate February 15, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

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**CHAPTER 29**

[Substitute Senate Bill 6389]

**SCHOOL BUSES—FLAG DISPLAY**

AN ACT Relating to the ability to place the United States flag on school district buses; and amending RCW 46.61.380.

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

**Sec. 1.** RCW 46.61.380 and 1995 c 269 s 2501 are each amended to read as follows:

(1) The state superintendent of public instruction shall adopt and enforce rules not inconsistent with the law of this state to govern the design, marking, and mode of operation of all school buses owned and operated by any school district or privately owned and operated under contract or otherwise with any school district in this state for the transportation of school children. ~~((Those))~~

(2) School districts shall not be prohibited from placing or displaying a flag of the United States on a school bus when it does not interfere with the vehicle’s safe operation. The state superintendent of public instruction shall adopt and

enforce rules not inconsistent with the law of this state to govern the size, placement, and display of the flag of the United States on all school buses referenced in subsection (1) of this section.

(3) Rules shall by reference be made a part of any such contract or other agreement with the school district. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district is subject to such rules. It is unlawful for any officer or employee of any school district or for any person operating any school bus under contract with any school district to violate any of the provisions of such rules.

Passed the Senate February 15, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

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## CHAPTER 30

[Senate Bill 6401]

### COUNTY CLERKS

AN ACT Relating to standardizing references to county clerks; and amending RCW 36.23.030, 6.32.350, and 59.28.040.

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

**Sec. 1.** RCW 36.23.030 and 1987 c 363 s 3 are each amended to read as follows:

The clerk of the superior court at the expense of the county shall keep the following records:

(1) A record in which he or she shall enter all appearances and the time of filing all pleadings in any cause;

(2) A docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings on which it stands at the commencement of the session. One copy of this docket shall be furnished for the use of the court and another for the use of the members of the bar;

(3) A record for each session in which he or she shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him or her to make out a complete cost bill;

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in ~~((said))~~ the record at any time during the session in which they were made;

(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment

is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;

(6) A ~~((journal))~~ record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;

(7) A record of wills and bonds shall be maintained. Originals shall be placed in the original file and shall be preserved or duplicated pursuant to RCW 36.23.065;

(8) A record of letters testamentary, administration, and guardianship in which all letters testamentary, administration, and guardianship shall be recorded;

(9) A record of claims shall be entered in the appearance docket under the title of each estate or case, stating the name of each claimant, the amount of his or her claim and the date of filing of such;

(10) A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, and the date of filing each paper;

(11) Such other records as are prescribed by law and required in the discharge of the duties of his or her office.

**Sec. 2.** RCW 6.32.350 and 1893 c 133 s 34 are each amended to read as follows:

Each county clerk must keep in his or her office ~~((a book))~~ records indexed to the names of the judgment debtors, styled "~~((book))~~ records of orders appointing receivers of judgment debtors." A county clerk in whose office an order or a certified copy of an order is filed, as prescribed in this chapter, must immediately note thereupon the time of filing it, and as soon as practicable, must record it in the ~~((book))~~ records so kept by him or her. He or she must also, upon request, furnish forthwith to any party or person interested, one or more certified copies thereof. For each omission to comply with any provision of this section, a county clerk forfeits to the party aggrieved two hundred and fifty dollars, in addition to all damages sustained by reason of the omission.

**Sec. 3.** RCW 59.28.040 and 2000 c 255 s 3 are each amended to read as follows:

Except as provided in RCW 59.28.030, all owners of federally assisted housing shall, at least twelve months before the expiration of the rental assistance contract or prepayment of a mortgage or loan, serve a written notice of the anticipated expiration or prepayment date on each tenant household residing in the housing, on the clerk of the city, or clerk of the county legislative authority if in an unincorporated area, in which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development, by regular and certified mail. All owners of federally assisted housing shall also serve written notice of the anticipated expiration or prepayment date on each tenant household



that moves into the housing after the initial notice has been given, but before the expiration of the rental assistance contract or prepayment of the mortgage or loan. This notice shall be given before a new tenant is asked to execute a rental agreement or required to pay any deposits.

Passed the Senate February 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

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## CHAPTER 31

[Senate Bill 6408]

### SEX OFFENDER REGISTRATION—COMMUNICATION WITH A MINOR

AN ACT Relating to restoring sex offender registration for nonfelony communication with a minor convictions; reenacting and amending RCW 9A.44.130; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 9A.44.130 and 2001 c 169 s 1 and 2001 c 95 s 2 are each reenacted and 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 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. 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 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 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:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) 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))~~ (v) 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. 2.** This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140.

NEW SECTION. **Sec. 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate February 5, 2002.  
Passed the House March 5, 2002.  
Approved by the Governor March 12, 2002.  
Filed in Office of Secretary of State March 12, 2002.

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**CHAPTER 32**

[Substitute Senate Bill 6422]

**CRIMES AGAINST PROPERTY—PROPERTY OF ANOTHER**

AN ACT Relating to crimes involving property of another person; amending RCW 9A.48.010; and declaring an emergency.

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

**Sec. 1.** RCW 9A.48.010 and 1975-76 2nd ex.s. c 38 s 6 are each amended to read as follows:

(1) For the purpose of this chapter, (~~as now or hereinafter amended;~~) unless the context indicates otherwise:

(a) "Building" has the definition in RCW 9A.04.110(5), and where a building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;



(b) "Damages", in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act;

(c) "Property of another" means property in which the actor possesses anything less than exclusive ownership.

(2) To constitute arson it ~~((shall))~~ is not ~~((be))~~ necessary that a person other than the actor ~~((should have had))~~ has ownership in the building or structure damaged or set on fire.

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

Passed the Senate February 13, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 12, 2002.

Filed in Office of Secretary of State March 12, 2002.

## CHAPTER 33

[Senate Bill 6819]

### EXPENDITURE LIMITATIONS

AN ACT Relating to temporary amendments to the state's expenditure limitations to address the revenue shortfall in the 2001-2003 biennium; reenacting and amending RCW 43.135.035 and 43.135.045; providing an expiration date; and declaring an emergency.

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

**Sec. 1.** RCW 43.135.035 and 2001 c 3 s 8 (Initiative Measure No. 728) and 2000 2nd sp.s. c 2 s 2 are each reenacted and 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. However, during the 2001-2003 biennium, 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 majority 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 state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund to another fund or account includes any state legislative action taken after July 1, 2000, that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

(5) If the cost of any state program or function is shifted to the state general fund on or after January 1, 2000, from another source of funding, or if moneys are transferred to the state general fund from another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift.

**Sec. 2.** RCW 43.135.045 and 2001 c 3 s 9 (Initiative Measure No. 728), 2000 2nd sp.s. c 5 s 1, and 2000 2nd sp.s. c 2 s 3 are each reenacted and 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. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(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. However, during the 2001-2003 biennium, the legislature may transfer moneys from the emergency reserve fund to the general fund only with approval of a majority 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 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 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. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. 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.

(6) Earnings of the emergency reserve fund under RCW 43.84.092(4)(a) shall be transferred quarterly to the multimodal transportation account, except for those earnings that are in excess of thirty-five million dollars each fiscal year. Within thirty days following any fiscal year in which earnings transferred to the multimodal transportation account under this subsection did not total thirty-five million dollars, the state treasurer shall transfer from the emergency reserve fund an amount necessary to bring the total deposited in the multimodal transportation account under this subsection to thirty-five million dollars. The revenues to the multimodal transportation account reflected in this subsection provide ongoing support for the transportation programs of the state. However, it is the intent of the legislature that any new long-term financial support that may be subsequently provided for transportation programs will be used to replace and supplant the revenues reflected in this subsection, thereby allowing those revenues to be returned to the purposes to which they were previously dedicated.

NEW SECTION. **Sec. 3.** This act expires June 30, 2003.

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 7, 2002.

Passed the House March 12, 2002.

Approved by the Governor March 13, 2002.

Filed in Office of Secretary of State March 13, 2002.

## CHAPTER 34

[Engrossed Substitute House Bill 2540]

### COLLECTIVE BARGAINING—UNIVERSITY OF WASHINGTON EMPLOYEES

AN ACT Relating to collective bargaining for University of Washington employees who are enrolled in academic programs; adding a new section to chapter 41.56 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** (1) This act is intended to promote cooperative labor relations between the University of Washington and the employees who provide instructional, research, and related academic services, and who are enrolled as students at the university by extending collective bargaining rights under chapter 41.56 RCW and using the orderly procedures administered by the public employment relations commission. To achieve this end, the legislature intends that under chapter 41.56 RCW the university will exclusively bargain in good faith over all matters within the scope of bargaining under section 2 of this act.

(2) The legislature recognizes the importance of the shared governance practices developed at the University of Washington. The legislature does not intend to restrict, limit, or prohibit the exercise of the functions of the faculty in any shared governance mechanisms or practices, including the faculty senate, faculty councils, and faculty codes of the University of Washington; nor does the legislature intend to restrict, limit, or prohibit the exercise of the functions of the graduate and professional student senate, the associated students of the University of Washington, or any other student organization in matters outside the scope of bargaining covered by chapter 41.56 RCW.

(3) The legislature intends that nothing in this act will restrict, limit, or prohibit the University of Washington from consideration of the merits, necessity, or organization of any program, activity, or service established by the University of Washington, including, but not limited to, any decision to establish, modify, or discontinue any such program, activity, or service. The legislature further intends that nothing in this act will restrict, limit, or prohibit the University of Washington from having sole discretion over admission requirements for students, criterion for the award of certificates and degrees to students, academic criterion for selection of employees covered by this chapter, initial appointment of students, and the content, conduct, and supervision of courses, curricula, grading requirements, and research programs.

(4) The legislature does not intend to limit the matters excluded from collective bargaining to those items specified in this act.

**NEW SECTION. Sec. 2.** A new section is added to chapter 41.56 RCW to read as follows:

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the University of Washington with respect to employees who are enrolled in an academic program and are in a classification in (a) through (i) of this subsection on any University of Washington campus. The employees in (a) through (i) of this subsection constitute an appropriate bargaining unit:

- (a) Predoctoral instructor;
- (b) Predoctoral lecturer;
- (c) Predoctoral teaching assistant;
- (d) Predoctoral teaching associates I and II;
- (e) Tutors, readers, and graders in all academic units and tutoring centers;
- (f) Predoctoral staff assistant;
- (g) Predoctoral staff associates I and II;

(h) Except as provided in this subsection (1)(h), predoctoral researcher, predoctoral research assistant, and predoctoral research associates I and II. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include predoctoral researchers, predoctoral research assistants, and predoctoral research associates I and II who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

(i) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (h) of this subsection.

(2)(a) The scope of bargaining for employees at the University of Washington under this section excludes:

(i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by the University of Washington;

(ii) The amount of tuition or fees at the University of Washington. However, tuition and fee remission and waiver is within the scope of bargaining;

(iii) The academic calendar of the University of Washington; and

(iv) The number of students to be admitted to a particular class or class section at the University of Washington.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(ii) The University of Washington may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature.

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

Passed the House February 18, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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**CHAPTER 35**

[Senate Bill 6430]

**VETERANS—HIGH SCHOOL DIPLOMAS**

AN ACT Relating to high school diplomas for World War II veterans; and amending RCW 28A.230.120.

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

**Sec. I.** RCW 28A.230.120 and 1984 c 178 s 2 are each amended to read as follows:

(1) School districts shall issue diplomas to students signifying graduation from high school upon the students' satisfactory completion of all local and state

graduation requirements. Districts shall grant students the option of receiving a final transcript in addition to the regular diploma.

(2) School districts or schools of attendance shall establish policies and procedures to notify senior students of the transcript option and shall direct students to indicate their decisions in a timely manner. School districts shall make appropriate provisions to assure that students who choose to receive a copy of their final transcript shall receive such transcript after graduation.

(3)(a) A school district may issue a high school diploma to a person who:

(i) Is an honorably discharged member of the armed forces of the United States;

(ii) Was scheduled to graduate from high school after 1940 and before 1951; and

(iii) Left high school before graduation to serve in World War II.

(b) A school district may issue a diploma to or on behalf of a person otherwise eligible under (a) of this subsection notwithstanding the fact that the person holds a high school equivalency certification or is deceased.

(c) The superintendent of public instruction shall adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran under this subsection (3). The superintendent of public instruction shall specify what constitutes acceptable evidence of eligibility for a diploma.

Passed the Senate February 13, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

## CHAPTER 36

[Senate Bill 6425]

### SCHOOL MEAL PROGRAMS

AN ACT Relating to authorizing access to school meal programs and kitchen facilities; and amending RCW 28A.235.120.

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

**Sec. I.** RCW 28A.235.120 and 1997 c 13 s 4 are each amended to read as follows:

The directors of any school district may establish, equip and operate ~~((lunchrooms))~~ meal programs in school buildings for pupils~~(:)~~; certificated and classified employees~~(:)~~; volunteers; public agencies, political subdivisions, or associations that serve public entities while using school facilities; other local, state, or federal child nutrition programs; and for school or employee functions: **PROVIDED**, That the expenditures for food supplies shall not exceed the estimated revenues from the sale of ~~((lunches))~~ meals, federal ~~((lunch))~~ aid, Indian education fund lunch aid, or other anticipated revenue, including donations, to be received for that purpose: **PROVIDED FURTHER**, That the directors of any

school district may provide for the use of kitchens and lunchrooms or other facilities in school buildings to furnish meals to elderly persons at cost as provided in RCW 28A.623.020: PROVIDED, FURTHER, That the directors of any school district may provide for the use of kitchens and lunchrooms or other facilities in school buildings to furnish meals at cost as provided in RCW 28A.623.030 to children who are participating in educational or training or care programs or activities conducted by private, nonprofit organizations and entities and to students who are attending private elementary and secondary schools. Operation for the purposes of this section shall include the employment and discharge for sufficient cause of personnel necessary for preparation of food or supervision of students during lunch periods and fixing their compensation, payable from the district general fund, or entering into agreement with a private agency for the establishment, management and/or operation of a food service program or any part thereof.

Passed the Senate February 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 37

[Engrossed Senate Bill 6456]

### ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION—PERFORMANCE IMPROVEMENT GOALS

AN ACT Relating to authorizing the academic achievement and accountability commission to set performance improvement goals for certain disaggregated groups of students and dropout goals; and amending RCW 28A.655.030.

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

**Sec. I.** RCW 28A.655.030 and 1999 c 388 s 102 are each amended to read as follows:

The powers and duties of the academic achievement and accountability commission shall include, but are not limited to the following:

(1) For purposes of statewide accountability, the commission shall:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics by subject and grade level as the commission deems appropriate to improve student learning, once assessments in these subjects are required statewide. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically underachieving racial and ethnic backgrounds. The commission may establish school and school district goals addressing high school graduation rates and dropout reduction goals



for students in grades seven through twelve. The goals shall be in addition to any goals adopted in RCW 28A.655.050. The commission may also revise any goal adopted in RCW 28A.655.050. The commission shall adopt the goals by rule. However, before each goal is implemented, the commission shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b) Identify the scores students must achieve in order to meet the standard on the Washington assessment of student learning and determine student scores that identify levels of student performance below and beyond the standard. The commission shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose;

(c) Adopt objective, systematic criteria to identify successful schools and school districts and recommend to the superintendent of public instruction schools and districts to be recognized for two types of accomplishments, student achievement and improvements in student achievement. Recognition for improvements in student achievement shall include consideration of one or more of the following accomplishments:

(i) An increase in the percent of students meeting standards. The level of achievement required for recognition may be based on the achievement goals established by the legislature under RCW 28A.655.050 and the commission under (a) of this subsection;

(ii) Positive progress on an improvement index that measures improvement in all levels of the assessment; and

(iii) Improvements despite challenges such as high levels of mobility, poverty, English as a second language learners, and large numbers of students in special populations as measured by either the percent of students meeting the standard, or the improvement index.

When determining the baseline year or years for recognizing individual schools, the commission may use the assessment results from the initial years the assessments were administered, if doing so with individual schools would be appropriate;

(d) Adopt objective, systematic criteria to identify schools and school districts in need of assistance and those in which significant numbers of students persistently fail to meet state standards. In its deliberations, the commission shall consider the use of all statewide mandated criterion-referenced and norm-referenced standardized tests;

(e) Identify schools and school districts in which state intervention measures will be needed and a range of appropriate intervention strategies, beginning no earlier than June 30, 2001, and after the legislature has authorized a set of

intervention strategies. Beginning no earlier than June 30, 2001, and after the legislature has authorized a set of intervention strategies, at the request of the commission, the superintendent shall intervene in the school or school district and take corrective actions. This chapter does not provide additional authority for the commission or the superintendent of public instruction to intervene in a school or school district;

(f) Identify performance incentive systems that have improved or have the potential to improve student achievement;

(g) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system;

(h) Annually report by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission. The report may include recommendations of actions to help improve student achievement;

(i) By December 1, 2000, and by December 1st annually thereafter, report to the education committees of the house of representatives and the senate on the progress that has been made in achieving the reading goal under RCW 28A.655.050 and any additional goals adopted by the commission;

(j) Coordinate its activities with the state board of education and the office of the superintendent of public instruction;

(k) Seek advice from the public and all interested educational organizations in the conduct of its work; and

(l) Establish advisory committees, which may include persons who are not members of the commission;

(2) Holding meetings and public hearings, which may include regional meetings and hearings;

(3) Hiring necessary staff and determining the staff's duties and compensation. However, the office of the superintendent of public instruction shall provide staff support to the commission until the commission has hired its own staff, and shall provide most of the technical assistance and logistical support needed by the commission thereafter. The office of the superintendent of public instruction shall be the fiscal agent for the commission. The commission may direct the office of the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations; and

(4) Receiving per diem and travel allowances as permitted under RCW 43.03.050 and 43.03.060.

Passed the Senate February 15, 2002.  
 Passed the House March 5, 2002.  
 Approved by the Governor March 14, 2002.  
 Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 38

[Senate Bill 6460]

### LOCAL GOVERNMENT RESEARCH SERVICES

AN ACT Relating to funding local government research services; and amending RCW 43.110.050, 66.08.190, 82.08.170, and 43.110.060.

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

**Sec. 1.** RCW 43.110.050 and 1997 c 437 s 3 are each amended to read as follows:

(1) A special account is created in the state treasury to be known as the county research services account. The account shall consist of all money transferred to the account under RCW 82.08.170 or otherwise transferred or appropriated to the account by the legislature. Moneys in the account may be spent only after appropriation. The account is subject to the allotment process under chapter 43.88 RCW.

Moneys in the county research services account may be expended only to finance the costs of county research.

(2) All unobligated moneys remaining in the account at the end of the fiscal biennium shall be distributed by the treasurer to the counties of the state in the same manner as the distribution under RCW 82.08.170(1)(a).

**Sec. 2.** RCW 66.08.190 and 2000 c 227 s 2 are each amended to read as follows:

(1) When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(a) Three-tenths of one percent to border areas under RCW 66.08.195; and

(b) From the amount remaining after distribution under (a) of this subsection, (i) fifty percent to the general fund of the state, (ii) ten percent to the counties of the state, and (iii) forty percent to the incorporated cities and towns of the state.

(2) During the months of ~~((July, October, January, and April))~~ June, September, December, and March of each year, prior to disbursing the distribution to incorporated cities and towns under subsection (1)(b) of this section, the treasurer shall deduct from that distribution an amount that ~~((when combined with any cash balance in the city and town research services account,))~~ will fund that quarter's allotments under RCW 43.88.110 from any legislative appropriation from the city and town research services account. The treasurer shall deposit the amount deducted into the city and town research services account.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340.

**Sec. 3.** RCW 82.08.170 and 1997 c 437 s 4 are each amended to read as follows:

(1) During the months of January, April, July and October of each year, the state treasurer shall make the apportionment and distribution of all moneys in the liquor excise tax fund to the counties, cities and towns in the following proportions: (a) Twenty percent of the moneys in ~~((said))~~ the liquor excise tax fund shall be divided among and distributed to the counties of the state in accordance with the provisions of RCW 66.08.200; and (b) eighty percent of the moneys in ~~((said))~~ the liquor excise tax fund shall be divided among and distributed to the cities and towns of the state in accordance with the provisions of RCW 66.08.210.

(2) Each fiscal quarter and prior to making the twenty percent distribution to counties under subsection (1)(a) of this section, the treasurer shall transfer to the county research services account under RCW 43.110.050 sufficient moneys ~~((that, when combined with any cash balance in the account, will))~~ to fund the allotments from any legislative appropriations from the county research services account.

**Sec. 4.** RCW 43.110.060 and 2000 c 227 s 1 are each amended to read as follows:

The city and town research services account is created in the state treasury. Moneys in the account shall consist of amounts transferred under RCW 66.08.190(2) and any other transfers or appropriations to the account. Moneys in the account may be spent only after an appropriation. Expenditures from the account may be used only for city and town research.

All unobligated moneys remaining in the account at the end of the fiscal biennium shall be distributed by the treasurer to the incorporated cities and towns of the state in the same manner as the distribution under RCW 66.08.190(1)(b)(iii).

The treasurer may disburse amounts appropriated to the municipal research council from the city and town research services account by warrant or check to the contracting parties on invoices or vouchers certified by the chair of the municipal research council or his or her designee. Payments to public agencies may be made in advance of actual work contracted for, at the discretion of the council.

Passed the Senate February 16, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 39

[Senate Bill 6469]

### MENTAL HEALTH SERVICES—OFFENDER INFORMATION

AN ACT Relating to information concerning mental health services provided to offenders; and amending RCW 71.34.225 and 71.05.445.

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

**Sec. 1.** RCW 71.34.225 and 2000 c 75 s 2 are each amended to read as follows:

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

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.200, except as provided in RCW 72.09.585.

(6) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

**Sec. 2.** RCW 71.05.445 and 2000 c 75 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) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(6) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.670 and 71.05.440.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

Passed the Senate February 13, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

## CHAPTER 40

[Senate Bill 6471]

### AGRICULTURAL PRODUCTS—LABELING

AN ACT Relating to labeling of agricultural products by place of origin; adding a new section to chapter 15.04 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 15.04 RCW to read as follows:

(1) The legislature finds that it is a common practice for consumers to be provided information as to the country origin for many products available to them for purchase. The legislature finds that consumers have a right to know the origin of the fresh fruits and vegetables being offered to them at retail sale. The legislature finds that there is value to the consumer being able to make an informed buying decision as to whether the fresh fruit or vegetable was produced under standards and conditions required in the United States. Further, the legislature finds that consumers should be given the ability to make an informed choice to buy

fresh fruits and vegetables that are grown in Washington state as a means of supporting the economy of the state.

(2) Stores or other businesses offering fresh fruit and vegetables for retail sale to consumers shall place a placard on the bin, shelf, or other location the product is displayed that informs the consumer where the fruit or vegetable was grown if it was grown in the United States or grown in Washington. The placard shall indicate that the product was either "Grown in United States" or "Grown in Washington." Placards are not required if (a) the product was grown outside of the United States, or (b) each item in the bin, shelf, or other location contains a sticker or label that indicates where the fruit or vegetable product was grown.

*(3) The department shall administer this section. If the store or other retail location is found to be in violation of this section, for the first violation per location each calendar year, the department shall issue a warning. For a second violation for the same location in the same calendar year, the department may issue a civil fine of up to two hundred fifty dollars. For the third and subsequent violations for the same location in the same calendar year, the department may issue a civil fine of up to one thousand dollars.*

\*Sec. 1 was partially vetoed. See message at end of chapter.

Passed the Senate February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 14, 2002.

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

"I am returning herewith, without my approval as to subsection 3, Senate Bill No. 6471 entitled:

"AN ACT Relating to labeling of agricultural products by place of origin:"

Senate Bill No. 6471 requires grocery stores or other businesses offering fresh fruit and vegetables to either display a placard near the produce stating if it was "Grown in the United States" or "Grown in Washington," or to label each piece of produce individually. Subsection 3 of the bill would have allowed a retailer failing to do so to be fined up to \$250 on the second violation and up to \$1000 on the third violation in a calendar year.

I agree with the intent of the bill, which is to reveal the origin of produce to consumers. However, the penalties established in subsection 3 of the bill are excessive. Subsection 3 would normally be a separate section, and even refers to itself as a section. For these and other reasons, it is subject to veto.

For these reasons, I have vetoed subsection 3 of Senate Bill No. 6471.

With the exception of subsection 3, Senate Bill No. 6471 is approved."

## CHAPTER 41

[Engrossed Senate Bill 6505]

### LOCAL IMPROVEMENT DISTRICTS

AN ACT Relating to local improvement districts; and amending RCW 35.45.030, 35.45.070, 35.45.080, and 35.54.010.

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



**Sec. 1.** RCW 35.45.030 and 1983 c 167 s 41 are each amended to read as follows:

(1) Local improvement bonds shall be in such denominations as may be provided in the ordinance authorizing their issue and shall be numbered from one upwards consecutively. Each bond shall (a) be signed by the mayor and attested by the clerk, (b) have the seal of the city or town affixed thereto, (c) refer to the improvement to pay for which it is issued and the ordinance ordering it, (d) provide that the principal sum therein named and the interest thereon shall be payable out of the local improvement fund created for the cost and expense of the improvement ~~((, or))~~ and out of the local improvement guaranty fund, unless the ordinance under which it was issued provides that the bonds shall not be secured by the local improvement guaranty fund; and out of a reserve fund, if one is established for such bonds pursuant to RCW 35.51.040; or, with respect to interest only, shall be payable out of the general revenues of the city or town, but only if pledged to the payment of such interest pursuant to RCW 35.45.065, and not otherwise, (e) provide that the bond owners' remedy in case of nonpayment shall be confined to the enforcement of the special assessments made for the improvement and to the guaranty fund and reserve fund, as applicable, and (f) be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Any interest coupons may be signed by the mayor and attested by the clerk, or in lieu thereof, may have printed thereon a facsimile of their signatures.

(2) Notwithstanding subsection (1) of this section, but subject to RCW 35.45.010, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

**Sec. 2.** RCW 35.45.070 and 1965 c 7 s 35.45.070 are each amended to read as follows:

(1)(a) Neither the holder nor owner of any bond, interest coupon, ~~((or))~~ warrant, or other short-term obligation issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of that city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, ~~((or))~~ warrant, or other short-term obligation for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

(b) A copy of the foregoing ~~((part))~~ in (a) of this ~~((section))~~ subsection shall be plainly written, printed, or engraved on each bond, interest coupon, warrant, or other short-term obligation.

(2) Notwithstanding the provisions of subsection (1) of this section, with respect to bonds, interest coupons, warrants, or other short-term obligations issued

under an ordinance providing that the obligations are not secured by the local improvement guaranty fund:

(a) Neither the holder nor owner of any obligation issued against a local improvement fund shall have any claim against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the obligation was issued.

(b) A copy of the foregoing in (a) of this subsection shall be plainly written, printed, or engraved on each bond, interest coupon, warrant, or other short-term obligation.

**Sec. 3.** RCW 35.45.080 and 1965 c 7 s 35.45.080 are each amended to read as follows:

If a city or town fails to pay any bonds or to promptly collect any local improvement assessments when due, the owner of the bonds may proceed in his own name to collect the assessment and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bond and interest thereon, five percent, together with the cost of suit. Any number of holders of bonds for any single improvement may join as plaintiffs and any number of owners of property upon which the assessments are liens may be joined as defendants in the same suit.

The owners of local improvement bonds issued by a city or town after the creation of a local improvement guaranty fund therein, shall also have recourse against the local improvement guaranty fund of such city or town unless the ordinance under which the bonds were issued provides that the bonds are not secured by the local improvement guaranty fund.

**Sec. 4.** RCW 35.54.010 and 1971 ex.s. c 116 s 7 are each amended to read as follows:

(1) There is established in every city and town a fund to be designated the "local improvement guaranty fund" for the purpose of guaranteeing, to the extent of the fund, the payment of its local improvement bonds and warrants or other short-term obligations issued to pay for any local improvement ordered in the city or town or in any area wholly or partly outside its corporate boundaries: ~~((1))~~ (a) In any city of the first class having a population of more than three hundred thousand, subsequent to June 8, 1927; ~~((2))~~ (b) in any city or town having created and maintained a guaranty fund under chapter 141, Laws of 1923, subsequent to the date of establishment of such fund; and ~~((3))~~ (c) in any other city or town subsequent to April 7, 1926: **PROVIDED**, That this shall not apply to any city of the first class which maintains a local improvement guaranty fund under chapter 138, Laws of 1917, but any such city maintaining a guaranty fund under chapter 138, Laws of 1917 may by ordinance elect to operate under the provisions of this chapter and may transfer to the guaranty fund created hereunder all the assets of the former fund and, upon such election and transfer, all bonds guaranteed under the former fund shall be guaranteed under the provisions of this chapter.

(2) The local improvement guaranty fund established under subsection (1) of this section shall not be subject to any claim by the owner or holder of any local improvement bond, warrant, or other short-term obligation issued under an ordinance that provides that such obligations shall not be secured by the local improvement guaranty fund.

Passed the Senate February 16, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 42

[Engrossed Substitute Senate Bill 6535]

### 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 2001 c 164 s 1 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 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 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.

(4) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection 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, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option C of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, 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, 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 February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

## CHAPTER 43

[Substitute Senate Bill 6572]

### ELECTIONS—CONSERVATION DISTRICT SUPERVISORS

AN ACT Relating to conservation district supervisors; amending RCW 29.13.020 and 89.08.190; adding a new section to chapter 42.17 RCW; creating new sections; providing an expiration date; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds that there are conflicting interpretations as to the intent of the legislature in the enactment of chapter 305, Laws of 1999. The purpose of this act is to make statutory changes that further clarify this intent.

It is the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW. Further, it is the intent of the legislature that there be no change made with regard to applicability of the public disclosure act, chapter 42.17 RCW, to conservation district supervisors from those that existed before the enactment of chapter 305, Laws of 1999.

**Sec. 2.** RCW 29.13.020 and 1994 c 142 s 2 are each amended to read as follows:

(1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

(a) Elections for the recall of any elective public officer;

(b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

(c) Consolidation proposals as provided for in RCW 28A.315.280 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor at least forty-five days prior to the proposed election date, may, if the county auditor deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection (3) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

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

(3) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(4) In addition to subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections.

**Sec. 3.** RCW 89.08.190 and 1973 1st ex.s. c 184 s 20 are each amended to read as follows:

Within thirty days after the issuance of the certificate of organization, unless the time is extended by the commission, petitions shall be filed with the commission to nominate candidates for the three elected supervisors. The petition shall be signed by not less than twenty-five district electors, and a district elector may sign petitions nominating more than one person.

In the case of a new district, the commission shall give due notice to elect the three supervisors. All provisions pertaining to elections on the creation of a district shall govern this election so far as applicable. The names of all nominees shall appear on the ballot in alphabetical order, together with instructions to vote for three. The three candidates receiving the most votes shall be declared elected supervisors, the one receiving the most being elected for a three-year term, the next for two and the last for one year. An alternate method of dividing the district into three zones may be used when requested by the board of supervisors and approved by the commission. In such case, instructions will be to vote for one in each zone. The candidate receiving the most votes in a zone shall be declared elected.

Each year after the creation of the first board of supervisors, the board shall by resolution and by giving due notice, set a date during the first quarter of each calendar year at which time it shall conduct an election, except that for elections in 2002 only, the board shall set the date during the second quarter of the calendar year at which time it shall conduct an election. Names of candidates nominated by petition shall appear in alphabetical order on the ballots, together with an extra line wherein may be written in the name of any other candidate. The commission shall establish procedures for elections, canvass the returns and announce the official results thereof. Election results may be announced by polling officials at the close of the election subject to official canvass of ballots by the commission. Supervisors elected shall take office at the first board meeting following the election.

NEW SECTION. **Sec. 4.** A new section is added to chapter 42.17 RCW to read as follows:

Elections of conservation district supervisors held pursuant to chapter 89.08 RCW shall not be considered general or special elections for purposes of the campaign disclosure and personal financial affairs reporting requirements of this chapter. Elected conservation district supervisors are not considered elected officials for purposes of the annual personal financial affairs reporting requirement of this chapter.

NEW SECTION. **Sec. 5.** (1) A work group on conservation district elections is created, comprised of seven members who are appointed as follows:

(a) The chair who shall be a person with expertise and experience in local elections, to be named by the president of a statewide organization of county auditors; and

(b) Six members appointed by agreement of the president of the senate and the speaker of the house of representatives with the following qualifications:

(i) Two persons who are landowners and are currently conservation district supervisors selected from a list nominated by a statewide association representing conservation district supervisors;

(ii) Two persons who are landowners and are not currently conservation district supervisors, one whom is selected from a list nominated by a statewide

dairy organization and the other whom is selected from a list nominated by a statewide agricultural organization;

(iii) One person who is selected from a list nominated by a statewide environmental organization and is knowledgeable about conservation district operations; and

(iv) One person representing county governments selected from a list nominated by the Washington association of counties.

(2) The work group shall conduct a review of conservation district election procedures and prepare recommendations for changes and improvements to the procedures including but not limited to:

(a) Defining eligibility requirements for holding the office of conservation district supervisor;

(b) Determining what public agency should be responsible for overseeing and certifying conservation district elections;

(c) Determining whether or not conservation district supervisors should be required to report under chapter 42.17 RCW;

(d) Determining the cost of proposed changes and how the costs of conservation district elections should be paid; and

(e) Determining what actions the conservation commission should take in response to implementing the recommendations of the work group for any elections conducted under chapter 89.08 RCW.

(3) The work group shall convene as soon as possible upon the appointment of its members. The work group shall provide progress reports as requested by the house of representatives committee on agriculture and ecology and the senate committee on agriculture and international trade during scheduled legislative committee assemblies or at other meetings of these committees.

(4) The work group may conduct town hall meetings in different regions of the state before submitting the recommendations to the legislature. The open public meetings act, chapter 42.30 RCW, applies to meetings conducted under this section. The work group shall announce the location and time of meetings.

(5) The work group shall provide a report of its findings and recommendations to the secretary of the senate and the chief clerk of the house of representatives by December 15, 2002.

(6) No additional funds may be appropriated for the purposes of the work group or the report in this section.

(7) This section expires April 15, 2003.

**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 Senate February 16, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 44

[Senate Bill 6578]

### PERSONAL WIRELESS SERVICES—DIVISIONS

AN ACT Relating to leases for personal wireless communication facilities; and amending RCW 58.17.040.

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

**Sec. 1.** RCW 58.17.040 and 1992 c 220 s 27 are each amended to read as follows:

The provisions of this chapter shall not apply to:

- (1) Cemeteries and other burial plots while used for that purpose;
- (2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;
- (3) Divisions made by testamentary provisions, or the laws of descent;
- (4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;
- (5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;
- (6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; ~~((and))~~
- (7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein

or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) In connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan; and

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.

Passed the Senate February 12, 2002.  
 Passed the House March 5, 2002.  
 Approved by the Governor March 14, 2002.  
 Filed in Office of Secretary of State March 14, 2002.

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**CHAPTER 45**

[Senate Bill 6587]  
 EYE BANKS

AN ACT Relating to eye banks; and repealing RCW 68.50.630.

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

NEW SECTION. Sec. 1. RCW 68.50.630 (Anatomical gifts—Corneal tissue) and 1993 c 228 s 15 are each repealed.

Passed the Senate February 14, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 46

[Substitute Senate Bill 6597]

### ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

AN ACT Relating to alternative public works contracting procedures; amending RCW 39.10.051, 39.10.061, 39.10.067, and 39.10.902; and declaring an emergency.

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

**Sec. 1.** RCW 39.10.051 and 2001 c 328 s 2 are each amended to read as follows:

(1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the design-build procedure of public works contracting for public works projects authorized under this section: The state department of general administration; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; and every port district with total revenues greater than fifteen million dollars per year. The authority granted to port districts in this section is in addition to and does not affect existing contracting authority under RCW 53.08.120 and 53.08.130. For the purposes of this section, "design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(2) Public bodies authorized under this section may utilize the design-build procedure for public works projects valued over (~~twelve~~) ten million dollars where:

(a) The construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

(3) Public bodies authorized under this section may also use the design-build procedure for the following projects that meet the criteria in subsection (2)(b) and (c) of this section:

(a) The construction or erection of preengineered metal buildings or prefabricated modular buildings, regardless of cost; or

(b) The construction of new student housing projects valued over five million dollars.

(4) Contracts for design-build services shall be awarded through a competitive process utilizing public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done, a notice of its request for proposals for design-build services and the availability and location of the request for proposal documents. The request for proposal documents shall include:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications, functional and operational elements, minimum and maximum net and gross areas of any building, and, at the discretion of the public body, preliminary engineering and architectural drawings;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. Evaluation factors shall include, but not be limited to: Proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected work loads of the firm; location; and the concept of the proposal;

(e) The form of the contract to be awarded;

(f) The amount to be paid to finalists submitting best and final proposals who are not awarded a design-build contract; and

(g) Other information relevant to the project.

(5) The public body shall establish a committee to evaluate the proposals based on the factors, weighting, and process identified in the request for proposals. Based on its evaluation, the public body shall select not fewer than three nor more than five finalists to submit best and final proposals. The public body may, in its sole discretion, reject all proposals. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection.

(a) Best and final proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for proposals. The public body may score the proposals using a system that measures the quality and technical merits of the proposal on a unit price basis. Final proposals may not be considered if the proposal cost is greater than the maximum allowable construction cost identified in the initial request for proposals. The public body shall initiate negotiations with the firm submitting the highest scored best and final proposal. If the public body is unable to execute a contract with the firm submitting the

highest scored best and final proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing plans and specifications that adequately meet project requirements, the public body may award the contract to the firm that submits the responsive best and final proposal with the lowest price.

(6) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting best and final proposals who are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects.

**Sec. 2.** RCW 39.10.061 and 2001 c 328 s 3 are each amended to read as follows:

(1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, a public body may utilize the general contractor/construction manager procedure of public works contracting for public works projects authorized under subsection (2) of this section. For the purposes of this section, "general contractor/construction manager" means a firm with which a public body has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

(2) Except those school districts proposing projects that are considered and approved by the school district project review board, public bodies authorized under this section may utilize the general contractor/construction manager procedure for public works projects valued over (~~twelve~~) ten million dollars where:

(a) Implementation of the project involves complex scheduling requirements; or

(b) The project involves construction at an existing facility which must continue to operate during construction; or

(c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project.

(3) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(4) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include: A description of the project, including programmatic, performance, and technical requirements and specifications when available; the reasons for using the general contractor/construction manager procedure; a description of the qualifications to be required of the proposer, including submission of the proposer's accident prevention program; a description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors; the form of the contract to be awarded; the estimated maximum allowable construction cost; and the bid instructions to be used by the general contractor/construction manager finalists. Evaluation factors shall include, but not be limited to: Ability of professional personnel, past performance in negotiated and complex projects, and ability to meet time and budget requirements; the scope of work the general contractor/construction manager proposes to self-perform and its ability to perform it; location; recent, current, and projected work loads of the firm; and the concept of their proposal. A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, these finalists shall submit final proposals, including sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals.

(5) The maximum allowable construction cost may be negotiated between the public body and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(6) All subcontract work shall be competitively bid with public bid openings. When critical to the successful completion of a subcontractor bid package and after publication of notice of intent to determine bidder eligibility in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done at least twenty days before requesting qualifications from interested subcontract bidders, the owner and general contractor/construction manager may determine subcontractor bidding eligibility using the following evaluation criteria:

- (a) Adequate financial resources or the ability to secure such resources;
- (b) History of successful completion of a contract of similar type and scope;
- (c) Project management and project supervision personnel with experience on similar projects and the availability of such personnel for the project;
- (d) Current and projected workload and the impact the project will have on the subcontractor's current and projected workload;
- (e) Ability to accurately estimate the subcontract bid package scope of work;
- (f) Ability to meet subcontract bid package shop drawing and other coordination procedures;
- (g) Eligibility to receive an award under applicable laws and regulations; and
- (h) Ability to meet subcontract bid package scheduling requirements.

The owner and general contractor/construction manager shall weigh the evaluation criteria and determine a minimum acceptable score to be considered an eligible subcontract bidder.

After publication of notice of intent to determine bidder eligibility, subcontractors requesting eligibility shall be provided the evaluation criteria and weighting to be used by the owner and general contractor/construction manager to determine eligible subcontract bidders. After the owner and general contractor/construction manager determine eligible subcontract bidders, subcontractors requesting eligibility shall be provided the results and scoring of the subcontract bidder eligibility determination.

Subcontract bid packages shall be awarded to the responsible bidder submitting the low responsive bid. The requirements of RCW 39.30.060 apply to each subcontract bid package. All subcontractors who bid work over three hundred thousand dollars shall post a bid bond and all subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for their contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager. 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. Except as provided for under subsection (7) of this section, bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder in accordance with RCW 39.10.080 or, if unsuccessful in such negotiations, rebid.

(7) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work if:

- (a) The work within the subcontract bid package is customarily performed by the general contractor/construction manager;
- (b) The bid opening is managed by the public body; and
- (c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package.

In no event may the value of subcontract work performed by the general contractor/construction manager exceed thirty percent of the negotiated maximum allowable construction cost.

(8) A public body may include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted may exceed five percent of the maximum allowable construction cost. If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the public body, the additional cost shall be the responsibility of the general contractor/construction manager.

**Sec. 3.** RCW 39.10.067 and 2000 c 209 s 3 are each amended to read as follows:

In addition to the projects authorized in RCW ~~((39.10.060))~~ 39.10.061, public bodies may also use the general contractor/construction manager contracting procedure for the construction of school district capital demonstration projects, subject to the following conditions:

(1) The project must receive approval from the school district project review board established under RCW 39.10.115.

(2) The school district project review board may not authorize more than ~~((two))~~ ten demonstration projects valued over ~~((ten))~~ five million dollars ~~((and))~~, of which at least two demonstration projects must be valued between five and ten million dollars.

~~((3) The school district project review board may not approve more than one demonstration project under this section for each school district.))~~

**Sec. 4.** RCW 39.10.902 and 2001 c 328 s 6 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007:

- (1) RCW 39.10.010 and 1994 c 132 s 1;
- (2) RCW 39.10.020 and 2001 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;
- (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;
- (4) RCW 39.10.040 and 1994 c 132 s 4;



- (5) RCW 39.10.051 and 2001 c 328 s 2 and section 1 of this act;
- (6) RCW 39.10.061 and 2001 c 328 s 3 and section 2 of this act;
- (7) RCW 39.10.065 and 1997 c 376 s 5;
- (8) RCW 39.10.067 and 2000 c 209 s 3 and section 3 of this act;
- (9) RCW 39.10.070 and 1994 c 132 s 7;
- (10) RCW 39.10.080 and 1994 c 132 s 8;
- (11) RCW 39.10.090 and 1994 c 132 s 9;
- (12) RCW 39.10.100 and 1994 c 132 s 10;
- (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
- (14) RCW 39.10.900 and 1994 c 132 s 13; and
- (15) RCW 39.10.901 and 1994 c 132 s 14.

**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 February 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

## CHAPTER 47

[Substitute Senate Bill 6602]

### EXTORTION

AN ACT Relating to extortion in the second degree; amending RCW 9A.56.130; and creating a new section.

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

**NEW SECTION.** **Sec. I.** The legislature intends to revise the crime of extortion in the second degree in response to the holding in *State v. Pauling*, 108 Wn. App. 445 (2001), by adding a requirement that the threat required for conviction of the offense be wrongful.

**Sec. 2.** RCW 9A.56.130 and 1975 1st ex.s. c 260 s 9A.56.130 are each amended to read as follows:

(1) A person is guilty of extortion in the second degree if he or she commits extortion by means of a wrongful threat as defined in RCW 9A.04.110(25) (d) through (j).

(2) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his or her sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

(3) Extortion in the second degree is a class C felony.

Passed the Senate February 18, 2002.  
 Passed the House March 5, 2002.  
 Approved by the Governor March 14, 2002.  
 Filed in Office of Secretary of State March 14, 2002.

## CHAPTER 48

[Senate Bill 6624]

### WELL CONSTRUCTION

AN ACT Relating to well construction; and amending RCW 18.104.020 and 18.104.055.

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

**Sec. 1.** RCW 18.104.020 and 2000 c 171 s 26 are each amended to read as follows:

The definitions (~~(set forth)~~) in this section apply throughout this chapter(~~(;)~~) unless (~~(a different meaning is plainly required by)~~) the context clearly requires otherwise.

(1) "Abandoned well" means a well that is unused, unmaintained, and is in such disrepair as to be unusable.

(2) "Constructing a well" or "construct a well" means:

- (a) Boring, digging, drilling, or excavating a well;
- (b) Installing casing, sheeting, lining, or well screens, in a well; (~~(or)~~)
- (c) Drilling a geotechnical soil boring; or
- (d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(4) "Department" means the department of ecology.

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

(7) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of ground water, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(8) "Geotechnical soil boring" or "boring" means (~~(an uncased)~~) a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface. (~~(Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.~~)

~~—(8))~~ (9) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

~~((9))~~ (10) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

~~((10))~~ (11) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

~~((11))~~ (12) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

~~((12))~~ (13) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

~~((13))~~ (14) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, or other entity who owns the property on which the well is or will be constructed.

~~((14))~~ (15) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

~~((15))~~ (16) "Remediation well" means a well intended or used to withdraw ground water or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual ground water contamination.

(17) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, and instrumentation wells.

~~((16))~~ (18) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

~~((17))~~ (19) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water.

~~((18))~~ (20) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

~~((19))~~ (21) "Well" means water wells, resource protection wells, ~~((instrumentation wells,))~~ dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for

oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

~~((20))~~ (22) "Well contractor" means a resource protection well contractor and a water well contractor.

**Sec. 2.** RCW 18.104.055 and 1993 c 387 s 9 are each amended to read as follows:

(1) A fee is hereby imposed on each well constructed in this state on or after July 1, 1993.

(2)(a) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is one hundred dollars.

(b) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is two hundred dollars.

(c) The fee for a new resource protection ~~(, observation, and monitoring)~~ well, except for an environmental investigation well, is forty dollars for each well.

(d) The fee for an environmental investigation well in which ground water is sampled or measured is forty dollars for construction of up to four environmental investigation wells per project, ten-dollars for each additional environmental investigation well constructed on a project with more than four wells. There is no fee for soil or vapor sampling purposes.

(e) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(3) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the department as provided by RCW 18.104.048. The department by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. ~~((The department shall refund the amount of any fees collected for any wells on which construction is not started.))~~ The department shall refund the amount of any fee collected for wells, borings, probes, or excavations as long as construction has not started and the department has received a refund request within one hundred eighty days from the time the department received the fee. The refund request shall be made on a form provided by the department.

Passed the Senate February 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 49

[Substitute Senate Bill 6629]

FAMILY LAW HANDBOOK

AN ACT Relating to a family law handbook; amending RCW 2.56.030; adding a new section to chapter 2.56 RCW; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** The legislature declares that:

- (1) Strong marital relationships result in stronger families, children, and ultimately, stronger communities and place less of a fiscal burden on the state; and
- (2) The state has a compelling interest in providing couples, applying for a marriage license, information with regard to marriage and, if contemplated, the effects of divorce.

**Sec. 2.** RCW 2.56.030 and 1997 c 41 s 2 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

- (1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;
- (2) Examine the state of the dockets of the courts and determine the need for assistance by any court;
- (3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;
- (4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;
- (5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;
- (6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;
- (7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;
- (8) Act as secretary of the judicial conference referred to in RCW 2.56.060;
- (9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;
- (10) Administer programs and standards for the training and education of judicial personnel;
- (11) Examine the need for new superior court and district judge positions under a weighted caseload analysis that takes into account the time required to hear all the cases in a particular court and the amount of time existing judges have available to hear cases in that court. The results of the weighted caseload analysis

shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that weighted caseload analysis become the basis for creating additional district court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 1997, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with section 3 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 2.56 RCW to read as follows:

(1) The administrator for the courts will create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form.

(2) The handbook created under subsection (1) of this section will be provided by the county auditor when an individual files a marriage certificate under RCW 26.04.090.

(3) The information contained in the handbook created under subsection (1) of this section will be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children.

Passed the Senate February 15, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

## CHAPTER 50

[Senate Bill 6664]

### OFFENDER RELEASE—COMMUNITY CUSTODY

AN ACT Relating to the department of corrections' authority to require offenders eligible for release to community custody status in lieu of earned release to propose a release plan that complies with the department's program for placing offenders in the community in lieu of early release; amending RCW 9.94A.728; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community.

**Sec. 2.** RCW 9.94A.728 and 2000 c 28 s 28 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.510 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, the aggregate earned release time may not exceed fifteen percent of the sentence. In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department,



for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time.

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

**NEW SECTION. Sec. 3.** This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after the effective date of this act.

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

**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 February 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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**CHAPTER 51**

[Senate Bill 6691]

**PORT COMMISSIONER DISTRICTS**

AN ACT Relating to authorizing less-than-countywide port districts with five commissioners with three commissioner districts and two at large commissioner districts to create five port commissioner districts; and amending RCW 53.12.010.

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

**Sec. 1.** RCW 53.12.010 and 1994 c 223 s 81 are each amended to read as follows:

(1) The powers of the port district shall be exercised through a port commission consisting of three or, when permitted by this title, five members. Every port district that is not coextensive with a county having a population of five hundred thousand or more shall be divided into the same number of commissioner districts as there are commissioner positions, each having approximately equal population, unless provided otherwise under subsection (2) of this section. Where a port district with three commissioner positions is coextensive with the boundaries of a county that has a population of less than five hundred thousand and the county has three county legislative authority districts, the port commissioner districts shall be the county legislative authority districts. In other instances where a port district is divided into commissioner districts, the port commission shall divide the port district into commissioner districts unless the commissioner districts have been described pursuant to RCW 53.04.031. The commissioner districts shall be altered as provided in chapter 53.16 RCW.

Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district; and (b) only the voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire port district may vote at a general election to elect a person as a commissioner of the commissioner district.

(2)(a) In port districts with five commissioners, two of the commissioner districts may include the entire port district if approved by the voters of the district either at the time of formation or at a subsequent port district election at which the issue is proposed pursuant to a resolution adopted by the board of commissioners and delivered to the county auditor.

(b) In a port district with five commissioners, where two of the commissioner districts include the entire port district, the port district may be divided into five commissioner districts if proposed pursuant to a resolution adopted by the board of commissioners or pursuant to a petition by the voters and approved by the voters of the district at the next general or special election occurring sixty or more days after the adoption of the resolution. A petition proposing such an increase must be submitted to the county auditor of the county in which the port district is located and signed by voters of the port district at least equal in number to ten percent of the number of voters in the port district who voted at the last general election.

Upon approval by the voters, the commissioner district boundaries shall be redrawn into five districts within one hundred twenty days and submitted to the county auditor pursuant to RCW 53.16.015. The new commissioner districts shall be numbered one through five and the three incumbent commissioners representing the three former districts shall represent commissioner districts one through three. The two at large incumbent commissioners shall represent commissioner districts

four and five. If, as a result of redrawing the district boundaries more than one of the incumbent commissioners resides in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the numbered commissioner districts they shall represent for the remainder of their respective terms.

Passed the Senate February 13, 2002.  
Passed the House March 5, 2002.  
Approved by the Governor March 14, 2002.  
Filed in Office of Secretary of State March 14, 2002.

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**CHAPTER 52**

[Engrossed Substitute Senate Bill 6702]  
SIBLING VISITATION

AN ACT Relating to protecting sibling relationships; amending RCW 13.34.025, 13.34.030, 13.34.060, 13.34.130, 13.34.136, 13.34.260, and 74.13.065; 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 recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention.

**Sec. 2.** RCW 13.34.025 and 2001 c 256 s 2 are each amended to read as follows:

The department of social and health services shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department must:

- (1) Coordinate and integrate services to children and families, using service plans and activities that address the children's and families' multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;
- (2) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and
- (3) Access training for department staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

**Sec. 3.** RCW 13.34.030 and 2000 c 122 s 1 are each amended to read as follows:

For purposes of this chapter:

- (1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights

and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(7) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(8) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(9) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(10) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(11) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(12) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

(13) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(14) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home

treatment programs that have been considered and rejected; the preventive services that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

**Sec. 4.** RCW 13.34.060 and 2000 c 122 s 4 are each amended to read as follows:

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055.

(a) Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered, priority placement for a child in shelter care shall be with any person described in RCW 74.15.020(2)(a). The person must be willing and available to care for the child and be able to meet any special needs of the child. The person must be willing to facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court. If a child is not initially placed with a relative pursuant to this section, the supervising agency shall make an effort within available resources to place the child with a relative on the next business day after the child is taken into custody. The supervising agency shall document its effort to place the child with a relative pursuant to this section. Nothing within this subsection (1)(a) establishes an entitlement to services or a right to a particular placement.

(b) Whenever a child is taken into custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing within seventy-two hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the

court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary.

(2) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parents, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title as soon as possible and in no event shall notice be provided more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody. The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

**Sec. 5.** RCW 13.34.130 and 2000 c 122 s 15 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (i) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (ii) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the



child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

- (a) There is no parent or guardian available to care for such child;
- (b) The parent, guardian, or legal custodian is not willing to take custody of the child; or
- (c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in the child's best interest to have contact or visits with siblings. The court must consider ordering that such contact or visits take place provided that:

(a) The court has jurisdiction over all siblings subject to the order of contact or visitation pursuant to petitions filed under this chapter;

(b) Contact or visitation is in the best interests of each child covered by the court's order; and

(c) There is no reasonable cause to believe that the health safety or welfare of any child subject to the order of visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

~~((4))~~ (5) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

**Sec. 6.** RCW 13.34.136 and 2000 c 122 s 18 are each amended to read as follows:

(1) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(3), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the agency will take to promote existing appropriate sibling relationships and/or facilitate contact in accordance with the best interests of each child, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(3), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required

to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed.

(2) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Sec. 7.** RCW 13.34.260 and 2000 c 122 s 32 are each amended to read as follows:

In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team. For purposes of this section, "foster care team" means the foster parent currently providing care, the currently assigned social worker, and the parent or parents.

**Sec. 8.** RCW 74.13.065 and 1995 c 311 s 26 are each amended to read as follows:

(1) The department, or agency responsible for supervising a child in out-of-home care, shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department or other agency. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

(a) The physical and emotional strengths and needs of the child;

(b) Emotional bonds with siblings and the need to maintain regular sibling contacts;

(c) The proximity of the child's placement to the child's family to aid reunification;

~~((e))~~ (d) The possibility of placement with the child's relatives or extended family;

~~((d))~~ (e) The racial, ethnic, cultural, and religious background of the child;

~~((e))~~ (f) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and

~~((f))~~ (g) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children.

Passed the Senate February 14, 2002.  
Passed the House March 5, 2002.  
Approved by the Governor March 14, 2002.  
Filed in Office of Secretary of State March 14, 2002.

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**CHAPTER 53**

[Senate Bill 6740]

**IRRIGATION DISTRICTS—PAYMENT METHODS**

AN ACT Relating to irrigation districts' acceptance of methods of payment; and adding a new section to chapter 87.03 RCW.

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

NEW SECTION. **Sec. I.** A new section is added to chapter 87.03 RCW to read as follows:

Irrigation districts that have designated their own treasurers as provided in RCW 87.03.440 may accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, assessments, fines, interest, penalties, special assessments, fees, rates, tolls and charges, or moneys due irrigation districts. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the board of directors finds that it is in the best interests of the district to not charge transaction processing costs for all payment transactions made for a specific category of nonassessment payments due the district, including, but not limited to, fines, interest not associated with assessments, penalties not associated with assessments, special assessments, fees, rates, tolls, and charges. The treasurer's cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the district to accept the specific form of payment used by the payer.

Passed the Senate February 18, 2002.  
Passed the House March 5, 2002.  
Approved by the Governor March 14, 2002.  
Filed in Office of Secretary of State March 14, 2002.

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**CHAPTER 54**

[Senate Bill 6788]

**CRIME VICTIM COMPENSATION—DEPENDENT PARENTS**

AN ACT Relating to benefits for dependent parents of homicide victims; and amending RCW 7.68.070.

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

**Sec. 1.** RCW 7.68.070 and 1996 c 122 s 5 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW except as provided in this section:

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

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

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

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim: PROVIDED FURTHER, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall

receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

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

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

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

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

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

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(16) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement.

(17) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(18) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

Passed the Senate February 15, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 55

[Senate Bill 6798]

### 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. 1.** RCW 35.79.030 and 2001 c 202 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. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, 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 Senate February 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.

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## CHAPTER 56

[Engrossed Second Substitute Senate Bill 6140]

### REGIONAL TRANSPORTATION INVESTMENT DISTRICTS

AN ACT Relating to the creation of regional transportation investment districts; amending RCW 81.104.140, 47.56.075, 82.14.050, 81.100.010, 81.100.030, 81.100.060, 82.80.030, 82.80.070, and 82.80.080; reenacting and amending RCW 47.05.021 and 43.84.092; adding new sections to chapter 47.05 RCW; adding a new section to chapter 47.17 RCW; adding a new section to chapter 47.56 RCW; adding a new section to chapter 82.14 RCW; adding a new section to chapter 82.32 RCW; adding new sections to chapter 82.80 RCW; adding a new chapter to Title 36 RCW; and creating new sections.

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

## I. CREATION OF REGIONAL TRANSPORTATION INVESTMENT DISTRICT

**NEW SECTION. Sec. 101. FINDINGS.** The legislature finds that:

(1) The capacity of many of Washington state's transportation facilities have failed to keep up with the state's growth, particularly in major urban regions;

(2) The state cannot by itself fund, in a timely way, many of the major capacity and other improvements required on highways of statewide significance in the state's largest urbanized area;

(3) Providing a transportation system that provides efficient mobility for persons and freight requires a shared partnership and responsibility between the state, local, and regional governments and the private sector; and

(4) Timely construction and development of significant transportation improvement projects can best be achieved through enhanced funding options for governments at the county and regional levels, using already existing tax authority to address roadway and multimodal needs and new authority for regions to address critical transportation projects of statewide significance.

**NEW SECTION. Sec. 102. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the governing body of a regional transportation investment district.

(2) "Department" means the Washington state department of transportation.

(3) "Highway of statewide significance" means an existing or proposed state route or federal interstate designated as a highway of statewide significance by the transportation commission, its successor entity, or the legislature.

(4) "Lead agency" means a public agency that by law can plan, design, and build a transportation project and has been so designated by the district.

(5) "Regional transportation investment district" or "district" means a municipal corporation whose boundaries are coextensive with two or more contiguous counties and that has been created by county legislative authorities and a vote of the people under this chapter to implement a regional transportation investment plan.

(6) "Regional transportation investment district planning committee" or "planning committee" means the advisory committee created under section 103 of this act to create and propose to county legislative authorities a regional transportation investment plan to develop, finance, and construct transportation projects.

(7) "Regional transportation investment plan" or "plan" means a plan to develop, construct, and finance a transportation project or projects.

(8) "Transportation project" means:

(a) A capital improvement or improvements to a highway that has been designated, in whole or in part, as a highway of statewide significance, including an extension, that:

(i) Adds a lane or new lanes to an existing state or federal highway; or

(ii) Repairs or replaces a lane or lanes damaged by an event declared an emergency by the governor before January 1, 2002.

(b) A capital improvement or improvements to all or a portion of a highway of statewide significance, including an extension, and may include the following associated multimodal capital improvements:

(i) Approaches to highways of statewide significance;

(ii) High-occupancy vehicle lanes;

(iii) Flyover ramps;

(iv) Park and ride lots;

(v) Bus pullouts;

(vi) Vans for vanpools;

(vii) Buses; and

(viii) Signalization, ramp metering, and other transportation system management improvements.

(c) A capital improvement or improvements to all or a portion of a city street, county road, or existing highway or the creation of a new highway that intersects with a highway of statewide significance, if all of the following conditions are met:

(i) The project is included in a plan that makes highway improvement projects that add capacity to a highway or highways of statewide significance;

(ii) The secretary of transportation determines that the project would better relieve traffic congestion than investing that same money in adding capacity to a highway of statewide significance;

(iii) Matching money equal to one-third of the total cost of the project is provided by local entities, including but not limited to a metropolitan planning organization, county, city, port, or private entity in which a county participating in a plan is located. Local entities may use federal grants to meet this matching requirement;

(iv) In no case may the cumulative regional transportation investment district contribution to all projects constructed under this subsection (8)(c) exceed ten percent of the revenues generated by the district;

(v) In no case may the cumulative regional transportation investment district contribution to all projects constructed under this subsection (8)(c) exceed one billion dollars; and

(vi) The specific projects are included within the plan and submitted as part of the plan to a vote of the people.

(d) Operations, preservation, and maintenance are excluded from this definition and may not be included in a regional transportation investment plan.

(9) "Weighted vote" means a vote that reflects the population each board or planning committee member represents relative to the population represented by the total membership of the board or planning committee. Population will be determined using the federal 2000 census or subsequent federal census data.

**NEW SECTION. Sec. 103. PLANNING COMMITTEE FORMATION.**

Regional transportation investment district planning committees are advisory entities that are created, convened, and empowered as follows:

(1) A county with a population over one million five hundred thousand persons and any adjoining counties with a population over five hundred thousand persons may create a regional transportation investment district and shall convene a regional transportation investment district planning committee.

(2) The members of the legislative authorities participating in planning under this chapter shall serve as the district planning committee. Members of the planning committee receive no compensation, but may be reimbursed for travel and incidental expenses as the planning committee deems appropriate.

The secretary of transportation, or the appropriate regional administrator of the department, as named by the secretary, shall serve on the committee as a nonvoting member.

(3) A regional transportation investment district planning committee may be entitled to state funding, as appropriated by the legislature, for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred in selecting transportation projects and funding for those transportation projects under this chapter. Upon creation of a regional transportation investment district, the district shall within one year reimburse the state for any sums advanced for these start-up costs from the state.

(4) The planning committee shall conduct its affairs and formulate a regional transportation investment plan as provided under section 104 of this act, except that it shall elect an executive board of seven members to discharge the duties of the planning committee and formulate a regional transportation investment plan, subject to the approval of the full committee.

(5) At its first meeting, a regional transportation investment district planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) Governance of and decisions by a regional transportation investment district planning committee must be by a sixty-percent weighted majority vote of the total membership.

(7) The planning committee may dissolve itself at any time by a two-thirds weighted majority vote of the total membership of the planning committee.

**NEW SECTION. Sec. 104. PLANNING COMMITTEE DUTIES.** (1) A

regional transportation investment district planning committee shall adopt a regional transportation investment plan providing for the development, construction, and financing of transportation projects. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria;

(b) The input of cities located within a participating county; and

(c) The input of regional transportation planning organizations in which a participating county is located. A regional transportation planning organization in

which a participating county is located shall review its adopted regional transportation plan and submit, for the planning committee's consideration, its list of transportation improvement priorities.

(2) The planning committee may coordinate its activities with the department, which shall provide services, data, and personnel to assist in this planning as desired by the planning committee. In addition, the planning committee may coordinate with affected cities, towns, and other local governments that engage in transportation planning.

(3) The planning committee shall:

(a) Conduct public meetings that are needed to assure active public participation in the development of the plan;

(b) Adopt a plan proposing the creation of a regional transportation investment district and recommending the construction of transportation projects to improve mobility. Operations, maintenance, and preservation of facilities or systems may not be part of the plan; and

(c) Recommend sources of revenue authorized by section 105 of this act and a financing plan to fund selected transportation projects. The overall plan of the district must leverage the district's financial contributions so that the federal, state, local, and other revenue sources continue to fund major congestion relief and transportation capacity improvement projects in the district. A combination of local, state, and federal revenues may be necessary to pay for transportation projects, and the planning committee shall consider all of these revenue sources in developing a plan.

(4) Before adopting the plan, the planning committee, with assistance from the department, shall work with the lead agency to develop accurate cost forecasts for transportation projects. This project costing methodology must be integrated with revenue forecasts in developing the plan and must at a minimum include estimated project costs in constant dollars as well as year of expenditure dollars, the range of project costs reflected by the level of project design, project contingencies, identification of mitigation costs, the range of revenue forecasts, and project and plan cash flow and bond analysis. The plan submitted to the voters must provide cost estimates for each project, including reasonable contingency costs. Plans submitted to the voters must provide that the maximum amount possible of the funds raised will be used to fund projects in the plan, including environmental improvements and mitigation, and that administrative costs be minimized. If actual revenue exceeds actual plan costs, the excess revenues must be used to retire any outstanding debt associated with the plan.

(5) If a county opts not to adopt the plan or participate in the regional transportation investment district, but two or more contiguous counties do choose to continue to participate, then the planning committee may, within ninety days, redefine the regional transportation investment plan and the ballot measure to be submitted to the people to reflect elimination of the county, and submit the redefined plan to the legislative authorities of the remaining counties for their

decision as to whether to continue to adopt the redefined plan and participate. This action must be completed within sixty days after receipt of the redefined plan.

(6) Once adopted, the plan must be forwarded to the participating county legislative authorities to initiate the election process under section 107 of this act. The planning committee shall at the same time provide notice to each city and town within the district, the governor, the chairs of the transportation committees of the legislature, the secretary of transportation, and each legislator whose legislative district is partially or wholly within the boundaries of the district.

(7) If the ballot measure is not approved, the planning committee may redefine the selected transportation projects, financing plan, and the ballot measure. The county legislative authorities may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at the next election or a special election. If no ballot measure is approved by the voters by the third vote, the planning committee is dissolved.

**NEW SECTION.** **Sec. 105. TAXES AND FEES.** (1) A regional transportation investment district planning committee may, as part of a regional transportation investment plan, recommend the imposition of some or all of the following revenue sources, which a regional transportation investment district may impose upon approval of the voters as provided in this chapter:

(a) A regional sales and use tax, as specified in section 405 of this act, of up to 0.5 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, upon the occurrence of any taxable event in the regional transportation investment district;

(b) A local option vehicle license fee, as specified under section 408 of this act, of up to one hundred dollars per vehicle registered in the district. As used in this subsection, "vehicle" means motor vehicle as defined in RCW 46.04.320. Certain classes of vehicles, as defined under chapter 46.04 RCW, may be exempted from this fee;

(c) A parking tax under RCW 82.80.030;

(d) A local motor vehicle excise tax under RCW 81.100.060 and chapter 81.104 RCW;

(e) An employer excise tax under RCW 81.100.030; and

(f) Vehicle tolls on new or reconstructed facilities. Unless otherwise specified by law, the department shall administer the collection of vehicle tolls on designated facilities, and the state transportation commission, or its successor, shall be the tolling authority.

(2) Taxes, fees, and tolls may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the district voting on a ballot proposition as set forth in section 107 of this act. Revenues from these taxes and fees may be used only to implement the plan as set forth in this chapter. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or fees authorized in this section.

(3) Existing statewide motor vehicle fuel and special fuel taxes, at the distribution rates in effect on January 1, 2001, are not intended to be altered by this chapter.

**NEW SECTION. Sec. 106. PERFORMANCE CRITERIA FOR REGIONAL TRANSPORTATION PROJECT SELECTION.** (1) The planning committee shall consider the following criteria for selecting transportation projects to improve corridor performance:

- (a) Reduced level of congestion and improved safety;
- (b) Improved travel time;
- (c) Improved air quality;
- (d) Increases in daily and peak period person and vehicle trip capacity;
- (e) Reductions in person and vehicle delay;
- (f) Improved freight mobility; and
- (g) Cost-effectiveness of the investment.

(2) These criteria represent only minimum standards that must be considered in selecting transportation improvement projects. The board shall also consider rules and standards for benchmarks adopted by the transportation commission or its successor.

**NEW SECTION. Sec. 107. SUBMISSION OF PLAN TO THE VOTERS.** Two or more contiguous county legislative authorities, upon receipt of the regional transportation investment plan under section 104 of this act, may certify the plan to the ballot, including identification of the tax options necessary to fund the plan. County legislative authorities may draft a ballot title, give notice as required by law for ballot measures, and perform other duties as required to put the plan before the voters of the proposed district for their approval or rejection as a single ballot measure that both approves formation of the district and approves the plan. Counties may negotiate interlocal agreements necessary to implement the plan. The electorate will be the voters voting within the boundaries of the participating counties. A simple majority of the total persons voting on the single ballot measure to approve the plan, establish the district, and approve the taxes and fees is required for approval.

**NEW SECTION. Sec. 108. CERTIFICATION OF FORMATION.** If the voters approve the plan, including creation of a regional transportation investment district and imposition of taxes and fees, the district will be declared formed. The county election officials of participating counties shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the district declaring the district formed, and mail copies of the notice to the governor, the secretary of transportation, and the executive director of the regional transportation planning organization in which any part of the district is located. A party challenging the procedure or the formation of a voter-approved district must file the challenge in writing by serving the prosecuting attorney of the participating counties and the attorney general within

thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the district’s valid formation.

**NEW SECTION. Sec. 109. BOARD COMPOSITION.** (1) The governing board of a district consists of the members of the legislative authority of each member county, acting ex officio and independently. The secretary of transportation or the appropriate regional administrator of the department, as named by the secretary, shall also serve as a nonvoting member of the board. The governing board may elect an executive board of seven members to discharge the duties of the governing board subject to the approval of the full governing board.

(2) A sixty-percent majority of the weighted votes of the total board membership is required to submit to the counties a modified plan under section 114 of this act or any other proposal to be submitted to the voters. The counties, may, with majority vote of each county legislative authority, submit a modified plan or proposal to the voters.

**NEW SECTION. Sec. 110. BOARD ORGANIZATION.** The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern district affairs, which may include:

- (1) The time and place of regular meetings;
- (2) Rules for calling special meetings;
- (3) The method of keeping records of proceedings and official acts;
- (4) Procedures for the safekeeping and disbursement of funds; and
- (5) Any other provisions the board finds necessary to include.

**NEW SECTION. Sec. 111. BOARD’S POWERS AND DUTIES.** (1) The governing board of the district is responsible for the execution of the voter-approved plan. The board shall:

- (a) Impose taxes and fees authorized by district voters;
- (b) Enter into agreements with state, local, and regional agencies and departments as necessary to accomplish district purposes and protect the district’s investment in transportation projects;
- (c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the district;
- (d) Monitor and audit the progress and execution of transportation projects to protect the investment of the public and annually make public its findings;
- (e) Pay for services and enter into leases and contracts, including professional service contracts;
- (f) Hire no more than ten employees, including a director or executive officer, a treasurer or financial officer, a project manager or engineer, a project permit coordinator, and clerical staff; and
- (g) Exercise other powers and duties as may be reasonable to carry out the purposes of the district.

(2) It is the intent of the legislature that existing staff resources of lead agencies be used in implementing this chapter. A district may coordinate its



activities with the department, which shall provide services, data, and personnel to assist as desired by the regional transportation investment district. Lead agencies for transportation projects that are not state facilities shall also provide staff support for the board.

(3) A district may not acquire, hold, or dispose of real property.

(4) A district may not own, operate, or maintain an ongoing facility, road, or transportation system.

(5) A district may accept and expend or use gifts, grants, or donations.

(6) It is the intent of the legislature that administrative and overhead costs of a regional transportation investment district be minimized. For transportation projects costing up to fifty million dollars, administrative and overhead costs may not exceed three percent of the total construction and design project costs per year. For transportation projects costing more than fifty million dollars, administrative and overhead costs may not exceed three percent of the first fifty million dollars in costs, plus an additional one-tenth of one percent of each additional dollar above fifty million. These limitations apply only to the district, and do not limit the administration or expenditures of the department.

(7) A district may use the design-build procedure for transportation projects developed by it. As used in this section "design-build procedure" means a method of contracting under which the district contracts with another party for that party to both design and build the structures, facilities, and other items specified in the contract. The requirements and limitations of RCW 47.20.780 and 47.20.785 do not apply to the transportation projects under this chapter.

**NEW SECTION. Sec. 112. TREASURER.** The regional transportation investment district, by resolution, shall designate a person having experience in financial or fiscal matters as treasurer of the district. The district may designate the treasurer of a county within which the district is located to act as its treasurer. Such a treasurer has all of the powers, responsibilities, and duties the county treasurer has related to investing surplus funds. The district shall require a bond with a surety company authorized to do business in this state in an amount and under the terms and conditions the district, by resolution, from time to time finds will protect the district against loss. The district shall pay the premium on the bond.

In addition to the account established in section 401 of this act, the treasurer may establish a special account, into which may be paid district funds. The treasurer may disburse district funds only on warrants issued by the district upon orders or vouchers approved by the district.

If the treasurer of the district is the treasurer of a county, all district funds must be deposited with a county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds must be deposited in a bank or banks authorized to do business in this state qualified for insured deposits under any federal deposit insurance act as the district, by resolution, designates.

The district may provide and require a reasonable bond of any other person handling moneys or securities of the district, but the district shall pay the premium on the bond.

**NEW SECTION. Sec. 113. DEBT AND BONDING.** The district may borrow money, but may not issue any debt of its own for more than two years' duration. A district may issue notes or other evidences of indebtedness with a maturity of not more than two years. A district may, when authorized by the plan, enter into agreements with the state or lead agencies to pledge taxes or other revenues of the district for the purpose of paying in part or whole principal and interest on bonds issued by the lead agency. The contracts pledging revenues and taxes are binding for the term of the agreement, but not to exceed twenty-five years, and no tax pledged by an agreement may be eliminated or modified if it would impair the pledge of the agreement.

**NEW SECTION. Sec. 114. TRANSPORTATION PROJECT OR PLAN MODIFICATION—ACCOUNTABILITY.** (1) A plan may be modified to change transportation projects or revenue sources if:

(a) Two or more participating counties adopt a resolution to modify the plan; and

(b) The counties submit to the voters in the district a ballot measure that redefines the scope of the plan, its projects, its schedule, its costs, or the revenue sources. If the voters fail to approve the redefined plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(2) If a transportation project cost exceeds its original cost by more than twenty percent as identified in the plan:

(a) The board shall, in coordination with the county legislative authorities, submit to the voters in the district a ballot measure that redefines the scope of the transportation project, its schedule, or its costs. If the voters fail to approve the redefined transportation project, the district shall terminate work on that transportation project, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds that would otherwise have been expended on the terminated transportation project must first be used to retire any outstanding debt attributable to the plan and then may be used to implement the remainder of the plan.

(b) Alternatively, upon adoption of a resolution by two or more participating counties:

(i) The counties shall submit to the voters in the district a ballot measure that redefines the scope of the plan, its transportation projects, its schedule, or its costs. If the voters fail to approve the redefined plan, the district shall terminate work on that plan, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds must be used to retire any outstanding debt attributable to the plan; or

(ii) The counties may elect to have the district continue the transportation project without submitting an additional ballot proposal to the voters.

(3) To assure accountability to the public for the timely construction of the transportation improvement project or projects within cost projections, the district shall issue a report, at least annually, to the public and copies of the report to newspapers of record in the district. In the report, the district shall indicate the status of transportation project costs, transportation project expenditures, revenues, and construction schedules. The report may also include progress towards meeting the performance criteria provided under this chapter.

**NEW SECTION. Sec. 115. STATE DEPARTMENT OF TRANSPORTATION ROLE.** (1) The department shall designate an office or division of dedicated staff and services whose primary responsibility is to coordinate the design, preliminary engineering, permitting, financing, and construction of transportation projects under consideration by a regional transportation investment district planning committee or that are part of a regional transportation investment plan being implemented by a regional transportation investment district.

(2) All of the powers granted the department under Title 47 RCW relating to highway construction may, at the request of a regional transportation investment district, be used to implement a regional transportation investment plan and construct transportation projects.

**NEW SECTION. Sec. 116. STATE OWNS IMPROVEMENTS TO STATE FACILITIES.** Any improvement to a state facility constructed under this chapter becomes and remains the property of this state.

**NEW SECTION. Sec. 117. DISSOLUTION.** Within thirty days of the completion of the construction of the transportation project or series of projects forming the regional transportation investment plan, the district shall terminate day-to-day operations and exist solely as a limited entity that oversees the collection of revenue and the payment of debt service or financing still in effect, if any. The district shall accordingly adjust downward its employees, administration, and overhead expenses. Any taxes, fees, or tolls imposed under an approved plan terminate when the financing or debt service on the transportation project or series of transportation projects constructed is completed and paid, thirty days from which point the district shall dissolve itself and cease to exist. If there is no debt outstanding, then the district shall dissolve within thirty days from completion of construction of the transportation project or series of transportation projects forming the regional transportation investment plan. Notice of dissolution must be published in newspapers of general circulation within the district at least three times in a period of thirty days. Creditors must file claims for payment of claims due within thirty days of the last published notice or the claim is extinguished.

**NEW SECTION. Sec. 118. OTHER REGIONS.** The legislature finds that regional solutions to the state's transportation needs are of paramount concern. The

legislature further recognizes that different areas of the state will need the flexibility to fashion local solutions to their transportation problems, and that regional transportation systems may evolve over time. Areas of the state outside of King, Snohomish, and Pierce counties are eligible for grants from the state of no more than two hundred thousand dollars each to study and develop regional transportation models. Regions receiving these grants shall:

- (1) Develop a model that can be used within their region to select, fund, and administer regional transportation solutions;
- (2) Adopt a county resolution approving the model proposed;
- (3) Form interlocal agreements among counties as appropriate;
- (4) Report to the transportation committees in the senate and house of representatives, petitioning the legislature to grant them authority to implement their proposed model.

**II. JOINT BALLOT WITH RTA**

**NEW SECTION. Sec. 201. JOINT BALLOT MEASURE.** At the option of the planning committee, and with the explicit approval of the regional transit authority, the participating counties may choose to impose any remaining high capacity transportation taxes under chapter 81.104 RCW that have not otherwise been used by a regional transit authority and submit to the voters a common ballot measure that creates the district, approves the regional transportation investment plan, implements the taxes, and implements any remaining high capacity transportation taxes within the boundaries of the regional transportation investment district. Collection and expenditures of any high capacity transportation taxes implemented under this section must be determined by agreement between the participating counties or district and the regional transit authority electing to submit high capacity transportation taxes to the voters under a common ballot measure as provided in this section. If the measure fails, all such unused high capacity transportation taxes revert back to and remain with the regional transit authority. A project constructed with this funding is not considered a "transportation project" under section 102 of this act.

**Sec. 202.** RCW 81.104.140 and 1992 c 101 s 25 are each amended to read as follows:

- (1) Agencies authorized to provide high capacity transportation service, including transit agencies and regional transit authorities, and regional transportation investment districts acting with the agreement of an agency, are hereby granted dedicated funding sources for such systems. These dedicated funding sources, as set forth in RCW 81.104.150, 81.104.160, and 81.104.170, are authorized only for agencies located in (a) each county with a population of two hundred ten thousand or more and (b) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described under (a) of this subsection. In any county with a population of one million or more or in

any county having a population of four hundred thousand or more bordering a county with a population of one million or more, these funding sources may be imposed only by a regional transit authority or a regional transportation investment district. Regional transportation investment districts may, with the approval of the regional transit authority within its boundaries, impose the taxes authorized under this chapter, but only upon approval of the voters and to the extent that the maximum amount of taxes authorized under this chapter have not been imposed.

(2) Agencies planning to construct and operate a high capacity transportation system should also seek other funds, including federal, state, local, and private sector assistance.

(3) Funding sources should satisfy each of the following criteria to the greatest extent possible:

- (a) Acceptability;
- (b) Ease of administration;
- (c) Equity;
- (d) Implementation feasibility;
- (e) Revenue reliability; and
- (f) Revenue yield.

(4) Agencies participating in regional high capacity transportation system development are authorized to levy and collect the following voter-approved local option funding sources:

(a) Employer tax as provided in RCW 81.104.150, other than by regional transportation investment districts;

- (b) Special motor vehicle excise tax as provided in RCW 81.104.160; and
- (c) Sales and use tax as provided in RCW 81.104.170.

Revenues from these taxes may be used only to support those purposes prescribed in subsection (10) of this section. Before the date of an election authorizing an agency to impose any of the taxes enumerated in this section and authorized in RCW 81.104.150, 81.104.160, and 81.104.170, the agency must comply with the process prescribed in RCW 81.104.100 (1) and (2) and 81.104.110. No construction on exclusive right of way may occur before the requirements of RCW 81.104.100(3) are met.

(5) Authorization in subsection (4) of this section shall not adversely affect the funding authority of transit agencies not provided for in this chapter. Local option funds may be used to support implementation of interlocal agreements with respect to the establishment of regional high capacity transportation service. Except when a regional transit authority exists, local jurisdictions shall retain control over moneys generated within their boundaries, although funds may be commingled with those generated in other areas for planning, construction, and operation of high capacity transportation systems as set forth in the agreements.

(6) Agencies planning to construct and operate high capacity transportation systems may contract with the state for collection and transference of voter-approved local option revenue.

(7) Dedicated high capacity transportation funding sources authorized in RCW 81.104.150, 81.104.160, and 81.104.170 shall be subject to voter approval by a simple majority. A single ballot proposition may seek approval for one or more of the authorized taxing sources. The ballot title shall reference the document identified in subsection (8) of this section.

(8) Agencies shall provide to the registered voters in the area a document describing the systems plan and the financing plan set forth in RCW 81.104.100. It shall also describe the relationship of the system to regional issues such as development density at station locations and activity centers, and the interrelationship of the system to adopted land use and transportation demand management goals within the region. This document shall be provided to the voters at least twenty days prior to the date of the election.

(9) For any election in which voter approval is sought for a high capacity transportation system plan and financing plan pursuant to RCW 81.104.040, a local voter's pamphlet shall be produced as provided in chapter 29.81A RCW.

(10) Agencies providing high capacity transportation service shall retain responsibility for revenue encumbrance, disbursement, and bonding. Funds may be used for any purpose relating to planning, construction, and operation of high capacity transportation systems and commuter rail systems, personal rapid transit, busways, bus sets, and entrained and linked buses.

### III. HIGHWAYS OF STATEWIDE SIGNIFICANCE

**Sec. 301.** RCW 47.05.021 and 1998 c 245 s 95 and 1998 c 171 s 5 are each reenacted and amended to read as follows:

**LEGISLATURE MAY DESIGNATE HIGHWAYS OF STATEWIDE SIGNIFICANCE.** (1) The transportation commission is hereby directed to conduct periodic analyses of the entire state highway system, report thereon to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, biennially and based thereon, to subdivide, classify, and subclassify according to their function and importance all designated state highways and those added from time to time and periodically review and revise the classifications into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial statewide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) In making the functional classification the transportation commission shall adopt and give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The transportation commission or the legislature shall designate state highways of statewide significance under RCW 47.06.140(~~, and~~). If the commission designates a state highway of statewide significance, it shall submit a list of such facilities for adoption by the ((1999)) legislature. This statewide system shall include at a minimum interstate highways and other statewide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The transportation commission shall designate a freight and goods transportation system. This statewide system shall include state highways, county roads, and city streets. The commission, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods.

**NEW SECTION. Sec. 302.** A new section is added to chapter 47.05 RCW to read as follows:

**DESIGNATION OF STATE ROUTE NUMBER 509.** The legislature designates that portion of state route number 509 that runs or will run from state route number 518 in the north to the intersection with interstate 5 in the south as a state highway of statewide significance.

**NEW SECTION. Sec. 303.** A new section is added to chapter 47.05 RCW to read as follows:

**DESIGNATION OF HIGHWAYS OF REGIONAL SIGNIFICANCE.**

Highways of regional significance may receive funding under the conditions of section 102(8)(c) of this act. The following highways are of regional significance:

- (1) That portion of state route number 9 that runs from state route number 522 in the south to state route number 531 in the north;
- (2) That portion of state route number 524 that runs from state route number 5 easterly to state route number 522;
- (3) That portion of state route number 704 from state route number 5 to state route number 7.

**NEW SECTION. Sec. 304.** A new section is added to chapter 47.17 RCW to read as follows:

**DESIGNATION OF CROSS BASE HIGHWAY.** A state highway to be known as state route number 704 is established as follows: Beginning at a junction with state route number 5 in south Pierce county, thence easterly across Fort Lewis to a junction with state route number 7.

**IV. FINANCE**

**NEW SECTION. Sec. 401. REGIONAL TRANSPORTATION INVESTMENT DISTRICT ACCOUNT.** The regional transportation investment district account is created in the custody of the state treasurer. The purpose of this account is to act as an account into which may be deposited state money, if any, that may be used in conjunction with district money to fund transportation projects. Additionally, the district may deposit funds into this account for disbursement, as appropriate, on transportation projects. Nothing in this section requires any state matching money. All money deposited in the regional transportation investment district account will be used for design, right of way acquisition, capital acquisition, and construction, or for the payment of debt service associated with these activities, for regionally funded transportation projects developed under this chapter. Only the district may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account.

**Sec. 402.** RCW 43.84.092 and 2001 2nd sp.s. c 14 s 608, 2001 c 273 s 6, 2001 c 141 s 3, and 2001 c 80 s 5 are each reenacted and amended to read as follows:

**DEPOSIT OF SURPLUS BALANCE INVESTMENT EARNINGS—TREASURY INCOME ACCOUNT—ACCOUNTS AND FUNDS CREDITED.**

(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 oyster reserve land 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 regional transportation investment district 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 fruit express account, 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. 403.** A new section is added to chapter 47.56 RCW to read as follows:

**AUTHORIZATION FOR DISTRICT TO IMPOSE TOLLS.** Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, and only for the purposes authorized in section 105(1)(f) of this act, a regional transportation investment district may impose vehicle tolls on state routes where improvements financed in whole or in part by a regional transportation investment district add additional lanes to, or reconstruct lanes on, a highway of statewide significance. The department shall administer the collection of vehicle tolls on designated facilities unless otherwise specified in law, and the state transportation commission, or its successor, shall be the tolling authority.

**Sec. 404.** RCW 47.56.075 and 1984 c 7 s 252 are each amended to read as follows:

**DEPARTMENT OF TRANSPORTATION AUTHORIZATION FOR DISTRICT TOLL FACILITIES.** The department shall approve for construction only such toll roads as the legislature specifically authorizes or such toll facilities as are specifically sponsored by a regional transportation investment district, city, town, or county.

**NEW SECTION.** **Sec. 405.** A new section is added to chapter 82.14 RCW to read as follows:

**SALES AND USE TAX.** (1) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a sales and use tax of up to 0.5 percent of the selling price or value of the article used in the case of a use tax. The tax authorized by this section is in addition to the tax authorized by RCW 82.14.030 and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. Motor vehicles are exempt from the sales and use tax imposed under this subsection.

(2) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a tax on the use of a motor vehicle within a regional transportation investment district. The tax applies to those persons who reside within the regional transportation investment district. The rate of the tax may not exceed 0.5 percent of the value of the motor vehicle. The tax authorized by this subsection is in addition to the tax authorized under RCW 82.14.030 and must be imposed and collected at the time a taxable event under RCW 82.08.020(1) or 82.12.020 takes place. All revenue received under this subsection must be deposited in the local sales and use tax account and distributed to the regional transportation investment district according to RCW 82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller shall collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of chapter 82.14 RCW, and chapter 82.14 RCW applies fully to the use tax.

**Sec. 406.** RCW 82.14.050 and 1999 c 165 s 14 are each amended to read as follows:

**CONTRACTS FOR COLLECTION OF SALES AND USE TAX.** The counties, cities, and transportation authorities under RCW 82.14.045 (~~and~~), public facilities districts under chapters 36.100 and 35.57 RCW, and regional transportation investment districts shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter (~~which~~) that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, (~~and~~) public facilities districts, and regional transportation investment districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, (~~and~~) public facilities districts, and regional transportation investment districts monthly.

**NEW SECTION. Sec. 407.** A new section is added to chapter 82.32 RCW to read as follows:

**TRANSFER OF SALES TAX ON TOLL PROJECTS.** (1) The tax imposed and collected under chapters 82.08 and 82.12 RCW, less any credits allowed under

chapter 82.14 RCW, on initial construction for a transportation project to be constructed under chapter 36.— RCW (sections 101 through 118, 201, and 401 of this act), must be transferred to the transportation project to defray costs or pay debt service on that transportation project. In the case of a toll project, this transfer or credit must be used to lower the overall cost of the project and thereby the corresponding tolls.

(2) This transaction is exempt from the requirements in RCW 43.135.035(4).

(3) Government entities constructing transportation projects under chapter 36.— RCW (sections 101 through 118, 201, and 401 of this act) shall report to the department the amount of state sales or use tax covered under this section.

**NEW SECTION.** **Sec. 408.** A new section is added to chapter 82.80 RCW to read as follows:

**LOCAL OPTION VEHICLE LICENSE FEE.** (1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may set and impose an annual local option vehicle license fee, or a schedule of fees based upon the age of the vehicle, of up to one hundred dollars per motor vehicle registered within the boundaries of the region on every motor vehicle. As used in this section "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010. Vehicles registered under chapter 46.87 RCW and the International Registration Plan are exempt from the annual local option vehicle license fee set forth in this section. The department of licensing shall administer and collect this fee on behalf of regional transportation investment districts and remit this fee to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(2) The local option vehicle license fee applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(3) A regional transportation investment district imposing the local option vehicle license fee or initiating an exemption process shall enter into a contract with the department of licensing. The contract must contain provisions that fully recover the costs to the department of licensing for collection and administration of the fee.

(4) A regional transportation investment district imposing the local option fee shall delay the effective date of the local option vehicle license fee imposed by this section at least six months from the date of the final certification of the approval election to allow the department of licensing to implement the administration and collection of or exemption from the fee.

**Sec. 409.** RCW 81.100.010 and 1990 c 43 s 12 are each amended to read as follows:

**DISTRICT AUTHORITY TO IMPOSE HIGH-OCCUPANCY VEHICLE TAXES.** The need for mobility, growing travel demand, and increasing traffic

congestion in urban areas necessitate accelerated development and increased utilization of the high-occupancy vehicle system. RCW 81.100.030 and 81.100.060 provide taxing authority that counties or regional transportation investment districts can use in the near term to accelerate development and increase utilization of the high-occupancy vehicle system by supplementing available federal, state, and local funds.

**Sec. 410.** RCW 81.100.030 and 1991 c 363 s 153 are each amended to read as follows:

**DISTRICT AUTHORITY TO IMPOSE HIGH-OCCUPANCY VEHICLE EMPLOYER TAX.** (1) A county with a population of one million or more, or a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, and having within its boundaries existing or planned high-occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the tax has not already been imposed by the county, may, with voter approval impose an excise tax of up to two dollars per employee per month on all employers or any class or classes of employers, public and private, including the state located in the agency's jurisdiction, measured by the number of full-time equivalent employees. In no event may the total taxes imposed under this section exceed two dollars per employee per month for any single employer. The county or investment district imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate.

Counties or investment districts may contract with the state department of revenue or other appropriate entities for administration and collection of the tax. Such contract shall provide for deduction of an amount for administration and collection expenses.

(2) The tax shall not apply to employment of a person when the employer has paid for at least half of the cost of a transit pass issued by a transit agency for that employee, valid for the period for which the tax would otherwise be owed.

(3) A county or investment district shall adopt rules (~~which~~) that exempt from all or a portion of the tax any employer that has entered into an agreement with the county or investment district that is designed to reduce the proportion of employees who drive in single-occupant vehicles during peak commuting periods in proportion to the degree that the agreement is designed to meet the goals for the employer's location adopted under RCW 81.100.040.

The agreement shall include a list of specific actions that the employer will undertake to be entitled to the exemption. Employers having an exemption from all or part of the tax through this subsection shall annually certify to the county or investment district that the employer is fulfilling the terms of the agreement. The exemption continues as long as the employer is in compliance with the agreement.

If the tax authorized in RCW 81.100.060 is also imposed (~~by the county~~), the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under RCW 81.100.060.

**Sec. 411.** RCW 81.100.060 and 1998 c 321 s 34 are each amended to read as follows:

**DISTRICT AUTHORITY TO IMPOSE HIGH-OCCUPANCY VEHICLE MOTOR VEHICLE EXCISE TAX.** A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high-occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the surcharge has not already been imposed by the county, may, with voter approval, impose a local surcharge of not more than (~~13.64 percent on the state motor vehicle excise tax paid under RCW 82.44.020(1))~~ three-tenths of one percent of the value on vehicles registered to a person residing within the county and not more than 13.64 percent on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county or investment district. A county may impose the surcharge only to the extent that it has not been imposed by the district. No surcharge may be imposed on vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.085, or 46.16.090.

Counties or investment districts imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct an amount, as provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW shall, insofar as they are applicable to (~~state~~) motor vehicle excise taxes, be applicable to surcharges imposed under this section. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed (~~by the county~~), the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section.

**Sec. 412.** RCW 82.80.030 and 1990 c 42 s 208 are each amended to read as follows:

**DISTRICT AUTHORITY TO IMPOSE PARKING TAX.** (1) Subject to the conditions of this section, the legislative authority of a county (~~or~~), city, or district may fix and impose a parking tax on all persons engaged in a commercial parking business within its respective jurisdiction. A city or county may impose the tax only to the extent that it has not been imposed by the district, and a district may

impose the tax only to the extent that it has not been imposed by a city or county. The jurisdiction of a county, for purposes of this section, includes only the unincorporated area of the county. The jurisdiction of a city, or district includes only the area within its (~~incorporated~~) boundaries.

(2) In lieu of the tax in subsection (1) of this section, a city (~~(or)~~), a county in its unincorporated area, or a district may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business.

The city (~~(or)~~), county, or district may provide that:

- (a) The tax is paid by the operator or owner of the motor vehicle;
- (b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;
- (c) The tax is collected by the operator of the facility and remitted to the city (~~(or)~~), county, or district;
- (d) The tax is a fee per vehicle or is measured by the parking charge;
- (e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and
- (f) Tax exempt carpools, vehicles with handicapped decals, or government vehicles are exempt from the tax.

(3) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

(4) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business.

(5) The county (~~(or)~~), city, or district levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis. Each local government may develop by ordinance or resolution rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement.

(6) The proceeds of the commercial parking tax fixed and imposed by a city or county under subsection (1) or (2) of this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070. The proceeds of the parking tax imposed by a district must be used as provided in chapter 36.— RCW (sections 101 through 118, 201, and 401 of this act).

**Sec. 413.** RCW 82.80.070 and 1991 c 141 s 4 are each amended to read as follows:

**REQUIRES THAT LOCAL OPTION TAXES IMPOSED BY DISTRICT BE USED FOR DISTRICT TRANSPORTATION PROJECTS.** (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010,



82.80.020, 82.80.030, and 82.80.050 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high-capacity transit improvements and programs; and planning, design, and acquisition of right of way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation

revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

- (a) First, the project serves a multijurisdictional function;
- (b) Second, it is necessitated by existing or reasonably foreseeable congestion;
- (c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes. The association of Washington cities and the Washington state association of counties, in consultation with the legislative transportation committee, shall study the issue of nondiversion and make recommendations to the legislative transportation committee for language implementing the intent of this section by December 1, 1990.

(7) Local governments are encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section.

(9) Subsections (1) through (8) of this section do not apply to a regional transportation investment district imposing a tax or fee under the local option authority of this chapter. Proceeds collected under the exercise of local option authority under this chapter by a district must be used in accordance with chapter 36.— RCW (sections 101 through 118, 201, and 401 of this act).

**Sec. 414.** RCW 82.80.080 and 1998 c 281 s 2 are each amended to read as follows:

**LOCAL OPTION TAX REVENUE DISTRIBUTION.** (1) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and 82.80.020, levied by counties to the levying counties, and cities contained in those counties, based on the relative per capita population. County population for purposes of this section is equal to one and one-half of the unincorporated population of the county. In calculating the distributions, the state treasurer shall use the population estimates prepared by the state office of financial management and shall further calculate the distribution

based on information supplied by the departments of licensing and revenue, as appropriate.

(2) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and 82.80.020 levied by qualifying cities and towns to the levying cities and towns.

(3) The state treasurer shall distribute to the district revenues, less authorized deductions, generated by the local option taxes under RCW 82.80.010 or fees under section 408 of this act levied by a district.

NEW SECTION. Sec. 415. A new section is added to chapter 82.80 RCW to read as follows:

**DISTRICT DEFINED FOR LOCAL TAXES.** For the purposes of this chapter, "district" means a regional transportation investment district created under chapter 36.— RCW (sections 101 through 118, 201, and 401 of this act).

#### V. OTHER PROVISIONS

NEW SECTION. Sec. 501. CAPTIONS AND SUBHEADINGS. Captions and subheadings used in this act are not part of the law.

NEW SECTION. Sec. 502. CODIFICATION. Sections 101 through 118, 201, and 401 of this act constitute a new chapter in Title 36 RCW.

NEW SECTION. Sec. 503. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

***\*NEW SECTION. Sec. 504. NULL AND VOID. This act is null and void if a transportation revenue act containing new or additional revenue does not become law by December 31, 2002.***

\*Sec. 504 was vetoed. See message at end of chapter.

Passed the Senate March 14, 2002.

Passed the House March 14, 2002.

Approved by the Governor March 21, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 21, 2002.

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

"I am returning herewith, without my approval as to section 504, Engrossed Second Substitute Senate Bill No. 6140 entitled:

"AN ACT Relating to the creation of regional transportation investment districts;"

Engrossed Second Substitute Senate Bill No. 6140 allows voters of the three central Puget Sound counties to adopt a transportation funding and investment plan for their region. Section 504 would have rendered the entire bill - and perhaps even a majority vote in the region - null and void if a statewide transportation act containing new revenue does not become law by December 31, 2002. A statewide transportation act has been referred to the ballot for November 2002.

Section 504 of the bill creates legal issues that could thwart any transportation solution that the voters may approve. By vetoing this section, the three central Puget Sound counties will retain a dynamic new tool to begin to address their most pressing

transportation needs, regardless of the outcome of the statewide referendum. The three central Puget Sound counties are major contributors to our state's economy, yet this same area suffers from some of the worst traffic congestion in the country. It should not be restrained from moving forward on its own if the rest of the state is unwilling.

Make no mistake, however: I pledge to work vigorously for the passage of the statewide transportation referendum. Even if the central Puget Sound region employs all of the new revenue authority provided by this bill, it is only a part of the solution. Statewide revenues are still essential for these three counties, as well as the rest of the state.

In addition, I will continue to work with the Legislature to expand the regional transportation funding authority, created by this bill, to other regions of our state.

For these reasons, I have vetoed section 504 of Engrossed Second Substitute Senate Bill No. 6140.

With the exception of section 504, Engrossed Second Substitute Senate Bill No. 6140 is approved."

## CHAPTER 57

[Senate Bill 5523]

### TAX OVERPAYMENT—LEASED EQUIPMENT

AN ACT Relating to overpayments of tax concerning leased equipment when a remedy to refund the overpayment no longer exists under the nonclaim statute; and adding a new section to chapter 82.32 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 82.32 RCW to read as follows:

In addition to the procedure set forth in RCW 82.32.060 and as an exception to the four-year period explicitly set forth in RCW 82.32.060, an offset for a tax that has been paid in excess of that properly due may be taken under the following conditions: (1) The tax paid in excess of that properly due was sales tax paid on the purchase of property acquired for leasing; (2) the taxpayer was at the time of purchase entitled to purchase the property at wholesale under RCW 82.04.060; and (3) the taxpayer substantiates that sales tax was paid at the time of purchase and that there was no intervening use of the equipment by the taxpayer. The offset is applied to and reduced by the amount of retail sales tax otherwise due from the beginning of lease of the property until the offset is extinguished.

Passed the Senate February 6, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 58

[Senate Bill 6272]

### MEDICAL CARE—SEXUALLY VIOLENT PREDATORS

AN ACT Relating to contracting for medical care services under chapter 71.09 RCW; amending RCW 71.09.020; adding a new section to chapter 71.09 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 71.09 RCW to read as follows:

(1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to residents. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees.

**Sec. 2.** RCW 71.09.020 and 2001 2nd sp.s. c 12 s 102 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 social and health services.

(2) "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, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

~~((3))~~ (7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

~~((4))~~ (8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

~~((5))~~ (9) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

~~((6))~~ (10) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

~~((7))~~ (11) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, and public libraries.

~~((8))~~ (12) "Secretary" means the secretary of social and health services or the secretary's designee.

~~((9))~~ (13) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

~~((10))~~ (14) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

~~((11))~~ (15) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which

act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

~~((+2))~~ (16) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

~~((+3))~~ (17) "Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

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 February 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 59

[Senate Bill 6293]

### 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 2001 c 15 s 1 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, (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, (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 (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 or state statute 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 February 13, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 60

[Substitute Senate Bill 6350]

### HIGHWAY IMPROVEMENTS—COUNTY FUNDING

AN ACT Relating to county funding of state highway improvements; and amending RCW 36.75.035.

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

**Sec. 1.** RCW 36.75.035 and 1985 c 400 s 1 are each amended to read as follows:

A county pursuant to chapter 36.88 RCW, or a service district as provided for in chapter 36.83 RCW, may, with the approval of the state department of transportation, improve or fund the improvement of any state highway within its boundaries. The county may fund improvements under this section by any means authorized by law, (~~but may not make any expenditure for the purposes of this section from a county road fund under chapter 36.82 RCW~~) except that expenditures of county road funds under chapter 36.82 RCW under this section must be limited to improvements to the state highway system and shall not include maintenance or operations. Nothing in this section shall limit the authority of a county to fund cooperative improvement and maintenance agreements with the department of transportation, authorized by RCW 36.75.030 or 47.28.140.

Passed the Senate February 16, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.



## CHAPTER 61

[Senate Bill 6372]

## COMBINED FUND DRIVE

AN ACT Relating to the combined fund drive; amending RCW 41.04.035, 41.04.036, and 41.04.230; reenacting and amending RCW 43.79A.040; and adding new sections to chapter 41.04 RCW.

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

**Sec. 1.** RCW 41.04.035 and 1957 c 208 s 1 are each amended to read as follows:

For the purpose of RCW 41.04.035 and 41.04.036 "United Fund" means the organization conducting the single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and service purposes, which is commonly known as the United Fund ~~((, or the organization which serves in place of the United Fund organizations in communities where an organization known as the United Fund is not organized))~~ or the Washington state combined fund drive.

**Sec. 2.** RCW 41.04.036 and 1983 1st ex.s. c 28 s 2 are each amended to read as follows:

Any official of the state or of any of its political subdivisions authorized to disburse funds in payment of salaries or wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salary or wages of the officer or employee the amount of money designated by the officer or employee for payment to the United Fund or the Washington state combined fund drive.

The moneys so deducted shall be paid over promptly to the United Fund or the Washington state combined fund drive designated by the officer or employee. Subject to any ~~((regulations prescribed))~~ rules adopted by the office of financial management, the official authorized to disburse the funds in payment of salaries or wages may prescribe any procedures necessary to carry out RCW 41.04.035 and 41.04.036.

**NEW SECTION. Sec. 3.** A new section is added to chapter 41.04 RCW to read as follows:

The Washington state combined fund drive account is created in the custody of the state treasurer. All receipts from the combined fund drive must be deposited into the account. Expenditures from the account may be used only for the beneficiaries of the Washington state combined fund drive. Only the director of the department of personnel or the director's designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and an appropriation is not required for expenditures.

**NEW SECTION. Sec. 4.** A new section is added to chapter 41.04 RCW to read as follows:

The director of the department of personnel is authorized to adopt rules, after consultation with state agencies, institutions of higher education, and employee organizations, for the operation of the Washington state combined fund drive.

**Sec. 5.** RCW 41.04.230 and 1995 1st sp.s. c 6 s 21 are each amended to read as follows:

Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: **PROVIDED**, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: **PROVIDED**, That payment is made for parking facilities furnished by the agency or by the department of general administration.

(3) U.S. savings bond deductions: **PROVIDED**, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: **PROVIDED**, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: **AND PROVIDED, FURTHER**, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor or employee organization dues may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of RCW 41.06.150: **PROVIDED**, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor or employee organization: **PROVIDED, FURTHER**, That labor or employee organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(5), shall authorize a payroll deduction of

premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction.

**Sec. 6.** RCW 43.79A.040 and 2001 c 201 s 4 and 2001 c 184 s 4 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 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 state combined fund drive 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 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.

Passed the Senate February 18, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 62

[Senate Bill 6381]

### PUBLIC EMPLOYEES' RETIREMENT SYSTEM—PLAN 1 MEMBERS

AN ACT Relating to public employees' retirement system plan 1 members who separate from service without withdrawing their contributions from the retirement system; and amending RCW 41.40.150.

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

**Sec. 1.** RCW 41.40.150 and 1997 c 254 s 12 are each amended to read as follows:

Should any member die, or should the individual separate or be separated from service without leave of absence before attaining age sixty years, or should the individual become a beneficiary, except a beneficiary of an optional retirement allowance as provided by RCW 41.40.188, the individual shall thereupon cease to be a member except;

(1) As provided in RCW 41.40.170.

(2) An employee not previously retired who reenters service shall upon completion of six months of continuous service and upon the restoration, in one lump sum or in annual installments, of all withdrawn contributions: (a) With interest as computed by the director, which restoration must be completed within

a total period of five years of membership service following the member's first resumption of employment or (b) paying the amount required under RCW 41.50.165(2), be returned to the status, either as an original member or new member which the member held at time of separation.

(3)(a) Except as provided in (b) of this subsection, a member who separates or has separated after having completed at least five years of service shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty-five, however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

(b) A member who:

(i) Separates from service under this subsection on or after January 1, 2002; and

(ii) Attains the age of fifty with at least twenty years of service prior to separation; and

(iii) Is not retired as of the effective date of this act shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty.

If such a member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

(4) The recipient of a retirement allowance elected to office or appointed to office directly by the governor, and who shall apply for and be accepted in membership as provided in RCW 41.40.023(3) shall be considered to have terminated his or her retirement status and shall become a member of the retirement system with the status of membership the member held as of the date of retirement. Retirement benefits shall be suspended from the date of return to membership until the date when the member again retires and the member shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180: PROVIDED, That where any such right to retire is exercised to become effective before the member has rendered six uninterrupted months of service the type of retirement allowance the member had at the time of the member's previous retirement shall be reinstated, but no additional service credit shall be allowed: AND PROVIDED FURTHER, That if such a recipient of a retirement allowance does not elect to apply for reentry into membership as provided in RCW 41.40.023(3), the member shall be considered to

remain in a retirement status and the individual's retirement benefits shall continue without interruption.

(5) Any member who leaves the employment of an employer and enters the employ of a public agency or agencies of the state of Washington, other than those within the jurisdiction of this retirement system, and who establishes membership in a retirement system or a pension fund operated by such agency or agencies and who shall continue membership therein until attaining age sixty, shall remain a member for the exclusive purpose of receiving a retirement allowance without the limitation found in RCW 41.40.180(1) to begin on attainment of age sixty-five; however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits commencing at age sixty-five: **PROVIDED**, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

Passed the Senate February 15, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 63

[Engrossed Substitute Senate Bill 6449]

### MOBILE HOME PARKS—RENTAL AGREEMENTS

AN ACT Relating to allowing entrance and exit fees under limited circumstances; and amending RCW 59.20.060.

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

**Sec. 1.** RCW 59.20.060 and 1999 c 359 s 5 are each amended to read as follows:

(1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) The name and address of any party who has a secured interest in the mobile home, manufactured home, or park model;

(f) A forwarding address of the tenant or the name and address of a person who would likely know the whereabouts of the tenant in the event of an emergency or an abandonment of the mobile home, manufactured home, or park model;

(g)(i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that the park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice. The covenant or statement required by this subsection must appear in print that is larger than the other text of the lease and must be set off by means of a box, blank space, or comparable visual device;

The requirements of this subsection shall apply to tenancies initiated after April 28, 1989.

(h) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(i) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(j) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces;

(k) A statement of the current zoning of the land on which the mobile home park is located; and

(l) A statement of the expiration date of any conditional use, temporary use, or other land use permit subject to a fixed expiration date that is necessary for the continued use of the land as a mobile home park.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: **PROVIDED**, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of the vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more:

PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee." However, an entrance fee may be charged as part of a continuing care contract as defined in RCW 70.38.025;

(f) Which allows the landlord to charge a fee for guests: PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator.

Passed the Senate February 18, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 64

[Senate Bill 6482]

### ALCOHOL AND DRUG TREATMENT SERVICES

AN ACT Relating to removing time limits for treatment under the alcohol and drug addiction treatment and support act; and amending RCW 74.50.050.

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

**Sec. 1.** RCW 74.50.050 and 1989 1st ex.s. c 18 s 5 are each amended to read as follows:

(1) The department shall establish a treatment program to provide, within available funds, alcohol and drug treatment services for indigent persons eligible under this chapter. The treatment services may include but are not limited to:

(a) Intensive inpatient treatment services;



(b) Recovery house treatment;

(c) Outpatient treatment and counseling, including assistance in obtaining employment, and including a living allowance while undergoing outpatient treatment. The living allowance may not be used to provide shelter to clients in a dormitory setting that does not require sobriety as a condition of residence. The living allowance shall be administered on the clients' behalf by the outpatient treatment facility or other social service agency designated by the department. The department is authorized to pay the facility a fee for administering this allowance.

(2) ~~((No individual may receive treatment services under this section for more than six months in any two-year period. PROVIDED, That the department may approve additional treatment and/or living allowance as an exception.~~

—(3)) The department may require an applicant or recipient selecting treatment to complete inpatient and recovery house treatment when, in the judgment of a designated assessment center, such treatment is necessary prior to providing the outpatient program.

Passed the Senate February 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 65

[Senate Bill 6483]

### SECURITIES

AN ACT Relating to regulating securities; amending RCW 21.20.005, 21.20.020, 21.20.040, 21.20.110, 21.20.310, 21.20.370, and 21.20.380; and adding a new section to chapter 21.20 RCW.

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

**Sec. 1.** RCW 21.20.005 and 1998 c 15 s 1 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Director" means the director of financial institutions of this state.

(2) "Salesperson" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. "Salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10), (11), (12), or (13), (b) effecting transactions exempted by RCW 21.20.320 unless otherwise expressly required by the terms of the exemption, or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account.

"Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months that person does not direct more than fifteen offers to sell or to buy into or make more than five sales in this state in any manner to persons other than those specified in (b) of this subsection.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, (a) provide the foregoing investment advisory services to others for compensation as part of a business or (b) hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall also include any person who holds himself out as a financial planner.

"Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, certified public accountant licensed under chapter 18.04 RCW, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (c) a broker-dealer or its salesperson whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them, (d) a publisher of any bona fide newspaper, news magazine, news column, newsletter, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client, (e) a radio or television station, (f) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), (g) an investment adviser representative, or (h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an

unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person" means an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," "Investment Company Act of 1940," and "Investment Advisers Act of 1940" means the federal statutes of those names as amended before or after June 10, 1959.

(12)(a) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; voting-trust certificate; certificate of deposit for a security; (~~certificate of~~) fractional undivided interest (~~or participation~~) in an oil, gas, or (~~mining title or~~) mineral lease or in payments out of production under (~~such~~) a (~~title or~~) lease, right, or royalty; charitable gift annuity; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof; or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt

for, guarantee of, or warrant or right to subscribe to or purchase, any ~~((of the foregoing, or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by a real estate broker licensed by the state of Washington))~~ security under this subsection. This subsection applies whether or not the security is evidenced by a written document.

(b) "Security" does not include: (i) Any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period; or (ii) an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Investment adviser representative" means any partner, officer, director, or a person occupying similar status or performing similar functions, or other individual, who is employed by or associated with an investment adviser, and who does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities;

(b) Manages accounts or portfolios of clients;

(c) Determines which recommendation or advice regarding securities should be given;

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(e) Supervises employees who perform any of the functions under (a) through (d) of this subsection.

(15) "Relatives," as used in RCW 21.20.310(11) includes:

(a) A member's spouse;

(b) Parents of the member or the member's spouse;

(c) Grandparents of the member or the member's spouse;

(d) Natural or adopted children of the member or the member's spouse;

(e) Aunts and uncles of the member or the member's spouse; and

(f) First cousins of the member or the member's spouse.

(16) "Customer" means a person other than a broker-dealer or investment adviser.

(17) "Federal covered security" means any security defined as a covered security in the Securities Act of 1933.

(18) "Federal covered adviser" means any person registered as an investment adviser under section 203 of the Investment Advisers Act of 1940.

**Sec. 2.** RCW 21.20.020 and 1998 c 15 s 2 are each amended to read as follows:

(1) It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

~~((1))~~ (a) To employ any device, scheme, or artifice to defraud the other person;

~~((2))~~ (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(c) To engage in any dishonest or unethical practice as the director may define by rule.

This subsection (1) applies whether or not the person is an investment adviser, federal covered adviser, or investment adviser under this chapter or the Investment Advisers Act of 1940.

~~((3) To act)~~ (2) It is unlawful for an investment adviser, acting as principal for his or her own account, knowingly to sell any security to or purchase any security from a client, or act as a broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the execution of such transaction the capacity in which he or she is acting and obtaining the consent of the client to such transaction~~(; or~~

~~(4) To engage in any dishonest or unethical practice as the director may define by rule).~~

This subsection (2) does not apply to a transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

**Sec. 3.** RCW 21.20.040 and 1998 c 15 s 3 are each amended to read as follows:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless: (a) The person is registered under this chapter; (b) the person is exempted from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract as may be provided by rule or order of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW; (c) the person is a salesperson who satisfies the requirements of section 15(h)(2) of the Securities Exchange Act of 1934 and effects in this state no transactions other than those described by section 15(h)(3) of the Securities Exchange Act of 1934; ~~((or))~~ (d) the person is a salesperson effecting transactions in open-end investment company securities sold at net asset value without any sales charges; or (e) the person participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under section 401 or 403 of the United States Internal Revenue Code as set forth in RCW 48.18A.060.

(2) It is unlawful for any broker-dealer or issuer to employ a salesperson unless the salesperson is registered or exempted from registration.

(3) It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless: (a) The person is so registered or exempt from registration under this chapter; (b) the person has no place of business in this state and (i) the person's only clients in this state are investment advisers registered under this chapter, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, employee benefit plans with assets of not less than one million dollars, or governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or (ii) during the preceding twelve-month period the person has had fewer than six clients who are residents of this state other than those specified in (b)(i) of this subsection; (c) the person is an investment adviser to an investment company registered under the Investment Company Act of 1940; (d) the person is a federal covered adviser and the person has complied with requirements of RCW 21.20.050; or (e) the person is excepted from the definition of investment adviser under section 202(a)(11) of the Investment Advisers Act of 1940.

(4) It is unlawful for any person, other than a federal covered adviser, to hold himself or herself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser representative, is exempt from registration under RCW 21.20.040(1), or is excluded from the definition of investment adviser under RCW 21.20.005(6).

(5)(a) It is unlawful for any person registered or required to be registered as an investment adviser under this chapter to employ, supervise, or associate with an investment adviser representative unless such investment adviser representative is registered as an investment adviser representative under this chapter.

(b) It is unlawful for any federal covered adviser or any person required to be registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered or is exempted from registration under this chapter.

**Sec. 4.** RCW 21.20.110 and 1998 c 15 s 10 are each amended to read as follows:

(1) The director may by order deny, suspend, ~~((or))~~ revoke, restrict, condition, or limit any application or registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser; or censure or fine the registrant or an officer, director, partner, or person occupying similar functions for a registrant; ~~((or restrict or limit a registrant's function or activity of business for which registration is required in this state;))~~ if the director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-

dealer or investment adviser, any partner, officer, ~~((or))~~ director, or person occupying similar functions:

(a) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(b) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.30 RCW or any rule or order thereunder;

(c) Has been convicted, within the past ~~((five))~~ ten years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities ~~((or investment))~~, commodities ((business)), business investments, franchises, business opportunities, insurance, banking, or finance business, or any felony involving moral turpitude;

(d) Is permanently or temporarily enjoined or restrained by any court of competent jurisdiction in an action brought by the director, a state, or a federal government agency from engaging in or continuing any conduct or practice involving any aspect of the securities ~~((or investment))~~, commodities ((business)), business investments, franchises, business opportunities, insurance, banking, or finance business;

(e) Is the subject of an order ~~((of the director denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative))~~ entered after notice and opportunity for hearing:

(i) By the securities administrator of a state or by the Securities and Exchange Commission denying, revoking, or suspending registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(ii) By the securities administrator of a state or by the Securities and Exchange Commission sanctioning against a broker-dealer or an investment adviser;

(iii) By the Securities and Exchange Commission suspending or expelling the registrant from membership in a self-regulatory organization; or

(iv) By a court adjudicating a United States Postal Service fraud;

The director may not commence a revocation or suspension proceeding more than one year after the date of the order relied on. The director may not enter an order on the basis of an order under another state securities act unless that order was based on facts that would constitute a ground for an order under this section;

(f) Is the subject of an order ~~((entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesperson, or a commodity broker-dealer or sales representative, or the substantial equivalent of those terms as defined in this chapter or by the commodity futures trading commission denying or revoking registration as a commodity merchant as defined~~

in RCW 21.30.010, or is the subject of an order of suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the federal commodity exchange act, or is the subject of a United States post office fraud order; but (i) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and (ii) the director may not enter any order under this clause on the basis of an order unless that order was based on facts ~~which would currently constitute a ground for an order under this section~~), adjudication, or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodities Futures Trading Commission, the Federal Trade Commission, or a securities or insurance regulator of any state that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodities Exchange Act, the securities, insurance or commodities law of an state or a federal or state law under which a business involving investments, franchises, business opportunities, insurance, banking, or finance is regulated;

(g) Has engaged in dishonest or unethical practices in the securities or ~~((investment))~~ commodities business;

(h) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against ~~((a broker-dealer or investment adviser))~~ an applicant or registrant under this ~~((clause))~~ subsection(1)(h) without a finding of insolvency as to the ~~((broker-dealer or investment adviser))~~ applicant or registrant;

(i) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as otherwise provided in subsection (2) of this section; ~~((or))~~

(j) Has failed to supervise reasonably a salesperson or an investment adviser representative, or employee, if the salesperson, investment adviser representative, or employee was subject to the person's supervision and committed a violation of this chapter or a rule adopted or order issued under this chapter. For the purposes of this subsection, no person fails to supervise reasonably another person, if:

(i) There are established procedures, and a system for applying those procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by another person of this chapter, or a rule or order under this chapter; and

(ii) The supervising person has reasonably discharged the duties and obligations required by these procedures and system without reasonable cause to believe that another person was violating this chapter or rules or orders under this chapter;



(k) Has failed to pay the proper filing fee within thirty days after being notified by the director of a deficiency, but the director shall vacate an order under this subsection (1)(k) when the deficiency is corrected;

(l) Within the past ten years has been found, after notice and opportunity for a hearing to have:

(i) Willfully violated the law of a foreign jurisdiction governing or regulating the business of securities, commodities, insurance, or banking;

(ii) Been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative; or

(iii) Been suspended or expelled from membership by a securities exchange or securities association operating under the authority of the securities regulator of a foreign jurisdiction;

(m) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities or commodities laws of a state; or

(n) Refuses to allow or otherwise impedes the director from conducting an audit, examination, or inspection, or refuses access to any branch office or business location to conduct an audit, examination, or inspection.

(2) The director, by rule or order, may require that an examination, including an examination developed or approved by an organization of securities administrators, be taken by any class of or all applicants. The director, by rule or order, may waive the examination as to a person or class of persons if the administrator determines that the examination is not necessary or appropriate in the public interest or for the protection of investors.

~~((2))~~ (3) The director may issue a summary order pending final determination of a proceeding under this section upon a finding that it is in the public interest and necessary or appropriate for the protection of investors.

~~((3))~~ (4) The director may not impose a fine under this section except after notice and opportunity for hearing. The fine imposed under this section may not exceed five thousand dollars for each act or omission that constitutes the basis for issuing the order. If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner.

(5) Withdrawal from registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period as the administrator determines, unless a revocation or suspension proceeding is pending

when the application is filed. If a proceeding is pending, withdrawal becomes effective upon such conditions as the director, by order, determines. If no proceeding is pending or commenced and withdrawal automatically becomes effective, the administrator may nevertheless commence a revocation or suspension proceeding under subsection (1)(b) of this section within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(6) A person who, directly or indirectly, controls a person not in compliance with any part of this section may also be sanctioned to the same extent as the noncomplying person, unless the controlling person acted in good faith and did not directly or indirectly induce the conduct constituting the violation or cause of action.

(7) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order (~~(or a residential or visitation order)~~). If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 5.** RCW 21.20.310 and 1998 c 15 s 13 are each amended to read as follows:

RCW 21.20.140 through 21.20.300, inclusive, and 21.20.327 do not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsection~~(s)~~ (7) or (8) of this section: PROVIDED, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such

payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsection((§)) (7) or (8) of this section.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or insured or guaranteed by, any insurance company (~~((organized under the laws of this state and))~~) authorized to do (~~((and actually doing))~~) business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) (~~((subject to the jurisdiction of the interstate commerce commission; (b)))~~) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (~~((c))~~) (b) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (~~((d))~~) (c) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; (~~also~~) and equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security which meets the criteria for investment grade securities that the director may adopt by rule.

(9) Any prime quality negotiable commercial paper not intended to be marketed to the general public and not advertised for sale to the general public that is of a type eligible for discounting by federal reserve banks, that arises out of a current transaction or the proceeds of which have been or are to be used for a current transaction, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(10) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if: (a) The plan meets the requirements for qualification as a pension, profit sharing, or stock bonus plan under section 401 of the internal revenue code, as an incentive stock option plan under section 422 of the internal revenue code, as a nonqualified incentive stock option plan adopted with or as a supplement to an incentive stock option plan under section 422 of the internal revenue code, or as an employee stock purchase plan

under section 423 of the internal revenue code; or (b) the director is notified in writing with a copy of the plan thirty days before offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, fraternal, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States, which security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days: PROVIDED, That no offerings may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW 21.20.340(11) as now or hereafter amended.

The notice shall consist of the following:

- (a) The name and address of the issuer;
- (b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;
- (c) A short description of the security, price per security, and the number of securities to be offered;
- (d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;
- (e) A statement of the proposed use of the proceeds of the sale of the security; and
- (f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW 48.38.010.

**Sec. 6.** RCW 21.20.370 and 1998 c 15 s 17 are each amended to read as follows:

(1) The director in his or her discretion ~~((1))~~ (a) may annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order ~~((hereunder))~~ under this chapter, or to aid in the enforcement of this chapter or in the ~~((prescribing))~~ adoption of rules and forms ~~((hereunder, (2)))~~ under this chapter, (b) may engage in the detection and identification of criminal activities subject to this chapter, ~~((3))~~ (c) may require or permit any person to testify or to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and ~~((4))~~ (d) may publish information concerning a proceeding, an investigation, or any violation of this chapter or any rule or order ~~((hereunder))~~ under this chapter, if the director determines it is necessary or appropriate in the public interest or for the protection of investors.

(2) The enforcement unit of the securities division of the department of financial institutions may be authorized to receive criminal history record information in connection with the investigation of criminal activities subject to this chapter.

**Sec. 7.** RCW 21.20.380 and 1995 c 46 s 6 are each amended to read as follows:

(1) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If the activities constituting an alleged violation for which the information is sought would be a violation of this chapter had the activities occurred in this state, the director may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state.

(3) A subpoena issued to a financial institution under this section may, if the director finds it necessary or appropriate in the public interest or for the protection of investors, include a directive that the financial institution subpoenaed shall not disclose to third parties that are not affiliated with the financial institution, other than to the institution's legal counsel, the existence or content of the subpoena.

(4) In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, ~~((or on))~~ the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, or

the failure to comply with a nondisclosure directive under subsection (3) of this section, a court of competent jurisdiction of any county or the judge thereof, on application of the director, and after satisfactory evidence of willful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein.

**NEW SECTION. Sec. 8.** A new section is added to chapter 21.20 RCW to read as follows:

As required by chapter 48.18A RCW, a person selling variable contracts shall be registered as a broker-dealer or securities salesperson as required by this chapter. This chapter, and any rules or orders adopted under this chapter, applies to any person engaged in the offer, sale, or purchase of a variable contract. "Variable contract" means the same as set forth under chapter 48.18A RCW.

Passed the Senate February 16, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

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**CHAPTER 66**

[Senate Bill 6484]

**TRUSTS—CONSERVATION EASEMENT DONATION**

AN ACT Relating to federal estate tax benefits for conservation easements; and amending RCW 11.98.070 and 11.96A.030.

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

**Sec. 1.** RCW 11.98.070 and 1997 c 252 s 75 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

- (1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;
- (2) Sell on credit;
- (3) Grant, purchase or exercise options;
- (4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;
- (5) Deposit stock or other corporate securities with any protective or other similar committee;
- (6) Assent to corporate sales, leases, and encumbrances;
- (7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by RCW 11.98.070(31);

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in RCW 83.110.020(2), and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;



(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary; ((and))

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; and

(34)(a) Donate a qualified conservation easement, as defined by section 2031(c) of the Internal Revenue Code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under section 2031(c) of the Internal Revenue Code or the deduction allowed under section 2055(f) of the Internal Revenue Code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under

section 2031(c)(8)(B) of the Internal Revenue Code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under section 2031(c)(8)(B).

**Sec. 2.** RCW 11.96A.030 and 1999 c 42 s 104 are each amended to read as follows:

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

(1) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(f) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset.

(2) "Notice agent" has the meanings given in RCW 11.42.010.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney in fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(5) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over

the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(6) "Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(7) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(8) "Trustee" means any acting and qualified trustee of the trust.

(9) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

Passed the Senate February 14, 2002.

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## CHAPTER 67

[Senate Bill 6539]

### MOBILE TELECOMMUNICATIONS SOURCING ACT

AN ACT Relating to implementing the federal mobile telecommunications sourcing act; amending RCW 82.04.065, 82.08.0289, 82.14.020, 82.14B.030, 35.21.714, and 35A.82.060; adding new sections to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding new sections to chapter 82.32 RCW; adding a new section to chapter 35.21 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 United States congress has enacted the mobile telecommunications sourcing act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. The legislature desires to adopt implementing legislation governing taxation by the state and by affected local taxing jurisdictions within the state. The legislature recognizes that the federal act is intended to provide a clarification of sourcing rules that is revenue-neutral among the states, and that the clarifications required by the federal act are likely in fact to be revenue-neutral at the state level. The legislature also desires to take advantage of a provision of the federal act that allows a state with a generally applicable business and occupation tax, such as this state, to make certain of the uniform sourcing rules elective for such tax.

**Sec. 2.** RCW 82.04.065 and 1997 c 304 s 5 are each amended to read as follows:

(1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment

or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Network telephone service" means the providing by any person of access to a ~~((local))~~ telephone network, ~~((local))~~ telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a ~~((local))~~ telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. ~~("Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state:))~~ "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a ~~((local))~~ telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(3) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in subsections (1) and (2) of this section.

(4) "Telephone business" means the business of providing network telephone service, as defined in subsection (2) of this section. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(5) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with a service provided as an adjunct to a commercial mobile radio service, regardless of whether individual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(6) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile telecommunications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (6)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service or a service carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(7) "Designated data base provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic data base prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic data base; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a data base prescribed by 4 U.S.C. Secs. 116 through 126.

(8) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(9) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(10) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(11) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(12) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(13) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(14) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(15) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses, as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(16) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(17) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

**NEW SECTION.** Sec. 3. A new section is added to chapter 82.04 RCW to read as follows:

A telephone business other than a mobile telecommunications service provider must calculate gross proceeds of sales by including all charges for network telephone services originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 82.04 RCW to read as follows:

(1) Unless a mobile telecommunications service provider elects to be taxed under subsection (2) of this section, the mobile telecommunications service provider must calculate gross proceeds of sales by reporting all sales to, or sales between carriers for, customers with a place of primary use within this state, regardless of where the mobile telecommunications services originate, are received, or are billed, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126.

(2) A mobile telecommunications service provider may elect to calculate gross proceeds of sales by including all charges for mobile telecommunications services provided to all consumers, whether the consumers are the mobile telecommunications service provider's customers or not, if the services originate from or are received on telecommunications equipment or apparatus in this state and are billed to a person in this state.

(3) If a mobile telecommunications service provider elects to be taxed under subsection (2) of this section, the mobile telecommunications service provider must provide written notice of the election before the effective date of this section, or before the beginning date of any tax year thereafter in which it wishes to change its reporting and make this election.

(4) The department may provide, by rule, for formulary reporting as necessary to implement this section.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 82.08 RCW to read as follows:

For the purposes of this chapter, mobile telecommunications services are deemed to have occurred at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126. The definitions in RCW 82.04.065 apply to this section.

**Sec. 6.** RCW 82.08.0289 and 1983 2nd ex.s. c 3 s 30 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Network telephone service, other than toll service, to residential customers(-);

(b) Network telephone service which is paid for by inserting coins in coin-operated telephones(-);



(c) Mobile telecommunications services, including any toll service, provided to a customer whose place of primary use is outside this state.

(2) ((As used in this section:)) The definitions in RCW 82.04.065, as well as the definitions in this subsection, apply to this section.

(a) ((("Network telephone service" has the meaning given in RCW 82.04.065. —(b))) "Residential customer" means an individual subscribing to a residential class of telephone service.

((((b))) (b) "Toll service" does not include customer access line charges for access to a toll calling network.

**Sec. 7.** RCW 82.14.020 and 2001 c 186 s 3 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 primary 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 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) 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 or a sale of mobile telecommunications services, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(b) A retail sale consisting of the providing to a consumer of mobile telecommunications services is deemed to have occurred at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) "City" means a city or town;

(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;

(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;

(10) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city.

**Sec. 8.** RCW 82.14B.030 and 1998 c 304 s 3 are each amended to read as follows:

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county 911 excise tax on the use of radio access lines located within the county in an amount not exceeding twenty-five cents per month for each radio access line. The amount of tax shall be uniform for each radio access line. The location of a radio access line is the customer's place of primary use as defined in RCW 82.04.065. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the subscribers who paid the tax. The ordinance shall further provide that to the extent the subscribers who paid the tax cannot be identified or located, the tax paid by those subscribers shall be returned to the county.

(3) A state enhanced 911 excise tax is imposed on all switched access lines in the state. The amount of tax shall not exceed twenty cents per month for each switched access line. The tax shall be uniform for each switched access line. The tax imposed under this subsection shall be remitted to the department of revenue by local exchange companies on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(4) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax, based on a systematic cost and revenue analysis, to the utilities and transportation

commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year.

**Sec. 9.** RCW 35.21.714 and 1989 c 103 s 1 are each amended to read as follows:

(1) Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business(~~(, as defined in RCW 82.04.065,)~~) which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service(~~(, as defined in RCW 82.04.065,)~~) which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in sections 11 through 15 of this act.

(3) The definitions in RCW 82.04.065 apply to this section.

**Sec. 10.** RCW 35A.82.060 and 1989 c 103 s 3 are each amended to read as follows:

(1) Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business(~~(, as defined in RCW 82.04.065,)~~) which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service(~~(, as defined in RCW 82.04.065,)~~) which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in sections 11 through 15 of this act.

(3) The definitions in RCW 82.04.065 apply to this section.

**NEW SECTION. Sec. 11.** A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) The department may provide an electronic data base as described in this section to a mobile telecommunications service provider, or if the department does not provide an electronic data base to mobile telecommunications service

providers, then the designated data base provider may provide an electronic data base to a mobile telecommunications service provider.

(b)(i) An electronic data base, whether provided by the department or the designated data base provider, shall be provided in a format approved by the American national standards institute's accredited standards committee X12, that after allowing for de minimis deviations, designates for each street address in the state, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

(ii) An electronic data base shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

(iii) The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the federation of tax administrators and the multistate tax commission, or their successors. Each address shall be provided in standard postal format.

(2) The department or designated data base provider, as applicable, that provides or maintains an electronic data base described in subsection (1) of this section shall provide notice of the availability of the then-current electronic data base, and any subsequent revisions, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in the state.

(3) A mobile telecommunications service provider using the data contained in an electronic data base described in subsection (1) of this section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the data base provided by the department or designated data base provider. The mobile telecommunications service provider shall reflect changes made to the data base during a calendar quarter not later than thirty days after the end of the calendar quarter if the department or designated data base provider, as applicable, has issued notice of the availability of an electronic data base reflecting the changes under subsection (2) of this section.

**NEW SECTION.** Sec. 12. A new section is added to chapter 82.32 RCW to read as follows:

(1) If neither the department nor the designated data base provider provides an electronic data base under section 11 of this act, a mobile telecommunications service provider shall be held harmless from any tax, charge, or fee liability in any taxing jurisdiction in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to section 13 of this act, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing

jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within the enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with section 13 of this act is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

(a) Expended reasonable resources to implement and maintain an appropriately detailed electronic data base of street address assignments to taxing jurisdictions;

(b) Implemented and maintained reasonable internal controls to correct misassignments of street addresses to taxing jurisdictions promptly; and

(c) Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the data base.

(2) Subsection (1) of this section applies to a mobile telecommunications service provider that is in compliance with the requirements of subsection (I) of this section, if in this state an electronic data base has not been provided under section 11 of this act, until the later of:

(a) Eighteen months after the nationwide standard numeric code described in section 11(1) of this act has been approved by the federation of tax administrators and the multistate tax commission; or

(b) Six months after the department or a designated data base provider in this state provides the data base as prescribed in section 11(1) of this act.

**NEW SECTION. Sec. 13.** A new section is added to chapter 82.32 RCW to read as follows:

A taxing jurisdiction, or the department on behalf of any taxing jurisdiction or taxing jurisdictions within this state, may:

(1) Determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in RCW 82.04.065 and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. If the authority making the determination is not the department, the taxing jurisdiction must obtain the consent of all affected taxing jurisdictions within the state before giving the notice of determination. Before the taxing jurisdiction gives the notice of determination, the customer must be given an opportunity to demonstrate, in accordance with applicable state or local tax, charge, or fee administrative procedures, that the address is the customer's place of primary use; and

(2) Determine that the assignment of a taxing jurisdiction by a home service provider under section 12 of this act does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination. If the authority making the determination is not the department, the taxing jurisdiction must obtain the consent of all affected taxing jurisdictions within the state before giving the notice of determination. The home service provider must be given an opportunity to demonstrate, in accordance with applicable state or local tax, charge, or fee administrative procedures, that the assignment reflects the correct taxing jurisdiction.

**NEW SECTION. Sec. 14.** A new section is added to chapter 82.32 RCW to read as follows:

(1) A home service provider is responsible for obtaining and maintaining information regarding the customer's place of primary use as defined in RCW 82.04.065. Subject to section 13 of this act, and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall:

(a) Allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and

(b) Not hold a mobile telecommunications service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use.

(2) Except as provided in section 13 of this act, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on August 1, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

**NEW SECTION. Sec. 15.** A new section is added to chapter 82.32 RCW to read as follows:

(1) This act does not modify, impair, supersede, or authorize the modification, impairment, or supersession of any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(2) If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the mobile telecommunications service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

(3) If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

**NEW SECTION. Sec. 16.** A new section is added to chapter 35.21 RCW to read as follows:

If a customer believes that an amount of city tax or an assignment of place of primary use or taxing jurisdiction included on a billing for mobile telecommunications services is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, and a description of the error asserted by the customer. Within sixty days of receiving a notice under this section, the home service provider shall review its records and the electronic data base or enhanced zip code used pursuant to sections 11 and 12 of this act to determine the customer's taxing jurisdiction. The home service provider shall notify the customer in writing of the results of its review.

The procedures in this section shall be the first remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges, and fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue to the extent otherwise permitted by law until a customer has reasonably exercised the rights and procedures set forth in this section.

**NEW SECTION. Sec. 17.** A new section is added to chapter 82.32 RCW to read as follows:

The definitions in RCW 82.04.065 apply to sections 11 through 16 of this act.

**NEW SECTION. Sec. 18.** If a court of competent jurisdiction enters a final judgment on the merits that is based on federal or state law, is no longer subject to appeal, and substantially limits or impairs the essential elements of P.L. 106-252 Secs. 116 through 126, or this act, then this act is null and void in its entirety.

**NEW SECTION. Sec. 19.** This act takes effect August 1, 2002.

Passed the Senate February 16, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 68

[Engrossed Substitute Senate Bill 6594]

## SECURE COMMUNITY TRANSITION FACILITIES

AN ACT Relating to the implementation of the recommendations of the joint select committee on the equitable distribution of secure community transition facilities; amending RCW 36.70A.200, 71.09.020, 71.09.285, 71.09.305, 71.09.255, and 36.70A.103; adding a new section to chapter 4.24 RCW; adding new sections to chapter 71.09 RCW; adding a new section to chapter 34.05 RCW; adding a new section to chapter 43.21C RCW; adding a new section to chapter 90.58 RCW; adding a new section to chapter 77.55 RCW; creating a new section; providing expiration dates; and declaring an emergency.

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

**NEW SECTION.** Sec. 1. The purpose of this act is to:

- (1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and
- (2) Harmonize the preemption provisions in RCW 71.09.250 with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state.

**Sec. 2.** RCW 36.70A.200 and 2001 2nd sp.s. c 12 s 205 are each amended to read as follows:

(1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than ~~((the deadline specified in RCW 36.70A.130))~~ September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities~~(;)~~ and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than ~~((the deadline specified in RCW 36.70A.130))~~ September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.



(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17.020, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with section 7 of this act.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(2); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action.

NEW SECTION. Sec. 3. A new section is added to chapter 4.24 RCW to read as follows:

(1) Law enforcement shall respond to a call regarding a resident of a secure community transition facility as a high priority call.

(2) No law enforcement officer responding reasonably and in good faith to a call regarding a resident of a secure community transition facility shall be held liable nor shall the city or county employing the officer be held liable, in any cause of action for civil damages based on the acts of the resident or the actions of the officer during the response.

Sec. 4. RCW 71.09.020 and 2001 2nd sp.s. c 12 s 102 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 social and health services.

(2) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

(3) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(4) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(5) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(6) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

(7) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, ~~((and))~~ public libraries, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(8) "Secretary" means the secretary of social and health services or the secretary's designee.

(9) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(10) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(11) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act

of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(12) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(13) "Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

**Sec. 5.** RCW 71.09.285 and 2001 2nd sp.s. c 12 s 213 are each amended to read as follows:

(1) Except with respect to the secure community transition facility established pursuant to RCW 71.09.250, the secretary shall develop policy guidelines that balance the average response time of emergency services to the general area of a proposed secure community transition facility against the proximity of the proposed site to risk potential activities and facilities in existence at the time the site is listed for consideration.

(2) In ~~((balancing the competing criteria of proximity and response time the policy guidelines shall endeavor to achieve an average law enforcement response time not greater than five minutes and in))~~ no case shall the policy guidelines permit location of a facility adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(3) The policy guidelines shall require that great weight be given to sites that are the farthest removed from any risk potential activity.

(4) The policy guidelines shall specify how distance from the location is measured and any variations in the measurement based on the size of the property within which a proposed facility is to be located.

(5) The policy guidelines shall establish a method to analyze and compare the criteria for each site in terms of public safety and security, site characteristics, and program components. In making a decision regarding a site following the analysis and comparison, the secretary shall give priority to public safety and security considerations. The analysis and comparison of the criteria are to be documented and made available at the public hearings prescribed in RCW 71.09.315.

(6) Policy guidelines adopted by the secretary under this section shall be considered by counties and cities when providing for the siting of secure community transition facilities as required under RCW 36.70A.200.

**Sec. 6.** RCW 71.09.305 and 2001 2nd sp.s. c 12 s 217 are each amended to read as follows:

(1) Unless otherwise ordered by the court:

(a) Residents of a secure community transition facility shall wear electronic monitoring devices at all times. To the extent that electronic monitoring devices that employ global positioning system technology are available and funds for this purpose are appropriated by the legislature, the department shall use these devices.

(b) At least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the secure community transition facility for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident. The escort must immediately notify the department of any serious violation, as defined in RCW 71.09.325, by the resident and must immediately notify law enforcement of any violation of law by the resident. The escort may not be a relative of the resident or a person with whom the resident has, or has had, a dating relationship as defined in RCW 26.50.010.

(2) Staff members of the special commitment center and any other total confinement facility and any secure community transition facility must be trained in self-defense and appropriate crisis responses including incident de-escalation. Prior to escorting a person outside of a facility, staff members must also have training in the offense pattern of the offender they are escorting. ~~((The escort may not be a relative of the resident.))~~

(3) Any escort must carry a cellular telephone or a similar device at all times when escorting a resident of a secure community transition facility.

(4) The department shall require training in offender pattern, self-defense, and incident response for all court-authorized escorts who are not employed by the department or the department of corrections.

**NEW SECTION.** **Sec. 7.** A new section is added to chapter 71.09 RCW to read as follows:

The minimum requirements set out in RCW 71.09.285 through 71.09.340 are minimum requirements to be applied by the department. Nothing in this section is intended to prevent a city or county from adopting development regulations, as defined in RCW 36.70A.030, unless the proposed regulation imposes requirements more restrictive than those specifically addressed in RCW 71.09.285 through 71.09.340. Regulations that impose requirements more restrictive than those specifically addressed in these sections are void. Nothing in these sections prevents the department from adding requirements to enhance public safety.

**Sec. 8.** RCW 71.09.255 and 2001 2nd sp.s. c 12 s 204 are each amended to read as follows:

(1) Upon receiving the notification required by RCW 71.09.250, counties must promptly notify the cities within the county of the maximum number of secure community transition facility beds that may be required and the projected number of beds to be needed in that county.

(2) The incentive grants and payments provided under this section are subject to the following provisions:

(a) Counties and the cities within the county must notify each other of siting plans to promote the establishment and equitable distribution of secure community transition facilities;

(b) Development regulations, ordinances, plans, laws, and criteria established for siting must be consistent with statutory requirements and rules applicable to siting and operating secure community transition facilities;

(c) The minimum size for any facility is three beds; and

(d) The department must approve any sites selected.

(3) Any county or city that makes a commitment to initiate the process to site one or more secure community transition facilities by ~~((February 1, 2002))~~ one hundred twenty days after the effective date of this act, shall receive a planning grant as proposed and approved by the department of community, trade, and economic development.

(4) Any county or city that has issued all necessary permits by May 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive an incentive grant in the amount of fifty thousand dollars for each bed sited.

(5) To encourage the rapid permitting of sites, any county or city that has issued all necessary permits by January 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive a bonus in the amount of twenty percent of the amount provided under subsection (4) of this section.

(6) Any county or city that establishes secure community transition facility beds in excess of the maximum number that could be required to be sited in that county shall receive a bonus payment of one hundred thousand dollars for each bed established in excess of the maximum requirement.

(7) No payment shall be made under subsection (4), (5), or (6) of this section until all necessary permits have been issued.

(8) The funds available to counties and cities under this section are contingent upon funds being appropriated by the legislature.

NEW SECTION. **Sec. 9.** A new section is added to chapter 71.09 RCW to read as follows:

(1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW 71.09.275 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the

city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the preemption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning, construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1).

**NEW SECTION. Sec. 10.** A new section is added to chapter 34.05 RCW to read as follows:

A petition brought pursuant to section 9(5) of this act shall be heard under the provisions of RCW 34.05.479 except that the decision of the governor's designee shall be final and is not subject to judicial review.

**NEW SECTION. Sec. 11.** A new section is added to chapter 71.09 RCW to read as follows:

An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under this chapter. To meet this emergency, for purposes of RCW 71.09.250 and section 9 of this act, "all other laws" means the state environmental policy act, the shoreline management

act, the hydraulics code, and all other state laws regulating the protection and use of the water, land, and air.

This section expires June 30, 2009.

**NEW SECTION. Sec. 12.** A new section is added to chapter 43.21C RCW to read as follows:

An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of section 9 of this act and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009.

**NEW SECTION. Sec. 13.** A new section is added to chapter 90.58 RCW to read as follows:

An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of section 9 of this act and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009.

**NEW SECTION. Sec. 14.** A new section is added to chapter 77.55 RCW to read as follows:

An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of section 9 of this act and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009.

**Sec. 15.** RCW 36.70A.103 and 2001 2nd sp.s. c 12 s 203 are each amended to read as follows:

State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW 71.09.250 (1) through (3), section 9 of this act, and 72.09.333.

The provisions of chapter 12, Laws of 2001 2nd sp. sess. do not affect the state's authority to site any other essential public facility under RCW 36.70A.200 in conformance with local comprehensive plans and development regulations adopted pursuant to chapter 36.70A RCW.

**NEW SECTION. Sec. 16.** A new section is added to chapter 71.09 RCW to read as follows:



(1) At the request of the local government of the city or county in which a secure community transition facility is initially sited after January 1, 2002, the department shall enter into a long-term contract memorializing the agreements between the state and the city or county for the operation of the facility. This contract shall be separate from any contract regarding mitigation due to the facility. The contract shall include a clause that states:

(a) The contract does not obligate the state to continue operating any aspect of the civil commitment program under this chapter;

(b) The operation of any secure community transition facility is contingent upon sufficient appropriation by the legislature. If sufficient funds are not appropriated, the department is not obligated to operate the secure community transition facility and may close it; and

(c) This contract does not obligate the city or county to operate a secure community transition facility.

(2) Any city or county may, at their option, contract with the department to operate a secure community transition facility.

NEW SECTION. **Sec. 17.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Subject to funds appropriated by the legislature, the department may enter into negotiation for a mitigation agreement with:

(a) The county and/or city in which a secure community transition facility sited after January 1, 2002, is located;

(b) Each community in which the persons from those facilities will reside or regularly spend time, pursuant to court orders, for regular work or education, or to receive social services, or through which the person or persons will regularly be transported to reach other communities; and

(c) Educational institutions in the communities identified in (a) and (b) of this subsection.

(2) Mitigation agreements are limited to the following:

(a) One-time training for local law enforcement and administrative staff, upon the establishment of a secure community transition facility.

(i) Training between local government staff and the department includes training in coordination, emergency procedures, program and facility information, legal requirements, and resident profiles.

(ii) Reimbursement for training under this subsection is limited to:

(A) The salaries or hourly wages and benefits of those persons who receive training directly from the department; and

(B) Costs associated with preparation for, and delivery of, training to the department or its contracted staff by local government staff or contractors;

(b) Information coordination:

(i) Information coordination includes data base infrastructure establishment and programming for the dissemination of information among law enforcement and the department related to facility residents.

- (ii) Reimbursement for information coordination is limited to start-up costs;
- (c) One-time capital costs:
  - (i) One-time capital costs are off-site costs associated with the need for increased security in specific locations.
  - (ii) Reimbursement for one-time capital costs is limited to actual costs; and
  - (d) Incident response:
    - (i) Incident response costs are law enforcement and criminal justice costs associated with violations of conditions of release or crimes by residents of the secure community transition facility.
    - (ii) Reimbursement for incident response does not include private causes of action.

**NEW SECTION. Sec. 18.** A new section is added to chapter 71.09 RCW to read as follows:

(1) To encourage economies of scale in the siting and operation of secure community transition facilities, the department may enter into an agreement with two or more counties to create a regional secure community transition facility. The agreement must clearly identify the number of beds from each county that will be contained in the regional secure community transition facility. The agreement must specify which county must contain the regional secure community transition facility and the facility must be sited accordingly. No county may withdraw from an agreement under this section unless it has provided an alternative acceptable secure community transition facility to house any displaced residents that meets the criteria established for such facilities in this chapter and the guidelines established by the department.

(2) A regional secure community transition facility must meet the criteria established for secure community transition facilities in this chapter and the guidelines established by the department.

(3) The department shall count the beds identified for each participating county in a regional secure community transition facility against the maximum number of beds that could be required for each county under RCW 71.09.250(7)(a).

(4) An agreement for a regional secure community transition facility does not alter the maximum number of beds for purposes of the incentive grants under RCW 71.09.255 for the county containing the regional facility.

**NEW SECTION. Sec. 19.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 20.** 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, 2002.  
 Passed the House March 8, 2002.  
 Approved by the Governor March 21, 2002.  
 Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 69

[House Bill 1196]

### PARKING AND BUSINESS IMPROVEMENT AREAS—BOUNDARIES

AN ACT Relating to parking and business improvement areas; and adding a new section to chapter 35.87A RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 35.87A RCW to read as follows:

(1) The legislative authority may modify the boundaries of a parking and business improvement area by ordinance, adopted after a hearing before the legislative authority. The legislative authority may modify an area either by expanding or reducing the existing boundaries. If the modification to the boundaries is to expand existing boundaries, the expansion area must be adjacent to an existing boundary. A modification to an existing boundary may occur no more than once per year and may not affect an area with a projected assessment fee greater than ten percent of the current assessment role for the existing area. If the modification of an area results in the boundary being expanded, the assessments for the new area shall be established pursuant to RCW 35.87A.080 and 35.87A.090 and any other applicable provision of this chapter.

(2) The legislative authority shall adopt a resolution of intention to modify the boundaries of an area at least fifteen days prior to the hearing required in subsection (1) of this section. The resolution shall specify the proposed modification and shall give the time and place of the hearing. Notice of the hearing shall be made in accordance with RCW 35.87A.050.

Passed the House January 28, 2002.  
 Passed the Senate March 7, 2002.  
 Approved by the Governor March 21, 2002.  
 Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 70

[House Bill 1512]

### SEXUAL EXPLOITATION—MINORS

AN ACT Relating to sexual exploitation of minors; and amending RCW 9.68A.011 and 9.68A.080.

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

**Sec. 1.** RCW 9.68A.011 and 1989 c 32 s 1 are each amended to read as follows:

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

(1) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means ((any)) anything tangible ((item)) or intangible produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer;

(f) Defecation or urination for the purpose of sexual stimulation of the viewer; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(4) "Minor" means any person under eighteen years of age.

(5) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

**Sec. 2.** RCW 9.68A.080 and 1989 c 32 s 6 are each amended to read as follows:

(1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so, are guilty of a gross misdemeanor.

(2) If, in the course of repairing, modifying, or maintaining a computer that has been submitted either privately or commercially for repair, modification, or maintenance, a person has reasonable cause to believe that the computer stores visual or printed matter that depicts a minor engaged in sexually explicit conduct, the person performing the repair, modification, or maintenance may report such incident, or cause a report to be made, to the proper law enforcement agency.

(3) A person who makes a report in good faith under this section is immune from civil liability resulting from the report.

Passed the House February 11, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 71

[Substitute House Bill 1741]

### HEALTH CARE—BLIND VENDORS

AN ACT Relating to health care benefits for blind vendors; amending RCW 74.18.230; and adding a new section to chapter 41.05 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The board shall offer a plan of health insurance to blind licensees who are actively operating facilities and participating in the business enterprises program established in RCW 74.18.200 through 74.18.230, and maintained by the department of services for the blind. The plan of health insurance benefits must be the same or substantially similar to the plan of health insurance benefits offered to state employees under this chapter. Enrollment will be at the option of each individual licensee or vendor, under rules established by the board.

(2) All costs incurred by the state or the board for providing health insurance coverage to active blind vendors, excluding family participation, under subsection (1) of this section may be paid for from net proceeds from vending machine operations in public buildings under RCW 74.18.230.

(3) Money from the business enterprises program under the federal Randolph-Sheppard Act may not be used for family participation in the health insurance benefits provided under this section. Family insurance benefits are the sole responsibility of the individual blind vendors.

**Sec. 2.** RCW 74.18.230 and 1993 c 369 s 1 are each amended to read as follows:

(1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises (~~revolving fund~~) program, which will pay only the blind vendors' portion, at the subscriber's rate, for the purpose of funding a plan of health insurance for blind vendors, as provided in section 1 of this act. Net proceeds, for purposes of this section, means the gross amount received less the costs of the operation, including a fair minimum return to the vending machine owner, which return shall not exceed a reasonable amount to be determined by the department.

(3) All federal moneys in the business enterprises revolving account shall be expended only for development and expansion of locations, equipment,

management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving account and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act.

Passed the House February 17, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 72

[Second Substitute House Bill 2100]

### ALTERNATIVE BID PROCEDURE—BID LIMITS

AN ACT Relating to increasing bid limits for the alternative bid procedure under RCW 39.04.190; and amending RCW 54.04.082 and 54.04.070.

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

**Sec. 1.** RCW 54.04.082 and 1995 c 354 s 1 are each amended to read as follows:

For the awarding of a contract to purchase any item, or items of the same kind of materials, equipment, or supplies in an amount exceeding ~~((five))~~ ten thousand dollars, but less than ~~((thirty-five))~~ fifty thousand dollars, exclusive of sales tax, the commission may, in lieu of the procedure described in RCW 54.04.070 and 54.04.080 requiring public notice to invite sealed proposals for such materials, equipment, or supplies, pursuant to commission resolution use the process provided in RCW 39.04.190. Waiver of the deposit or bid bond required under RCW 54.04.080 may be authorized by the commission in securing such bid quotations.

**Sec. 2.** RCW 54.04.070 and 2000 c 138 s 211 are each amended to read as follows:

Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of ~~((five))~~ ten thousand dollars, exclusive of sales tax shall be by contract: **PROVIDED**, That a district may make purchases of the same kind of items of materials, equipment and supplies not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding fifty thousand dollars in value without a contract: **PROVIDED**, That such limit on the value of

material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for the work or materials; plans and specifications of which shall at the time of the publication be on file at the office of the district subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

All contract projects equal to or in excess of one hundred thousand dollars shall be let by competitive bidding unless the public utility district lets contracts using the small works roster process under RCW 39.04.155.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond.

The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

Passed the House February 8, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 73

[House Bill 2302]

### UNEMPLOYMENT INSURANCE--TEMPORARY TOTAL DISABILITY DETERMINATIONS

AN ACT Relating to application methods for unemployment insurance temporary total disability determinations; and amending RCW 50.06.030.

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

**Sec. 1.** RCW 50.06.030 and 1993 c 483 s 5 are each amended to read as follows:

(1) In the case of individuals eligible under RCW 50.06.020(1), an application for initial determination made pursuant to this chapter, to be considered timely, must be filed in ~~((writing with the employment security department))~~ accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total disability commenced. Notice from the department of

labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability.

(2) In the case of individuals eligible under RCW 50.06.020(2), an application for initial determination must be filed in (~~writing with the employment security department~~) accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total physical disability commenced. This filing requirement is satisfied by filing a signed statement from the attending physician stating the date that the disability commenced and stating that the individual was unable to reenter the work force during the time of the disability. The department may examine any medical information related to the disability. If the claim is appealed, a base year employer may examine the medical information related to the disability and require, at the employer's expense, that the individual obtain the opinion of a second health care provider selected by the employer concerning any information related to the disability.

(3) The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

(4) For the purpose of this chapter, a special base year is established for an individual consisting of either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance or crime victims compensation laws, or the week in which the individual reentered the work force after an absence under subsection (2) of this section, as applicable, except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: **PROVIDED HOWEVER**, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the eligibility requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: **PROVIDED FURTHER**, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year.

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



quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Passed the House January 28, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 74

[House Bill 2313]

### ELECTRONIC FILING

AN ACT Relating to electronic filing and registration; amending RCW 19.09.020, 19.09.075, 19.09.279, 24.03.005, 24.03.145, 24.03.175, 24.03.183, 24.03.200, 24.03.245, 24.03.325, 24.03.330, 24.03.375, 25.15.020, 25.15.085, 25.15.095, 25.15.325, and 43.07.170; adding new sections to chapter 24.03 RCW; adding a new section to chapter 25.15 RCW; and creating a new section.

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

**Sec. 1.** RCW 19.09.020 and 1993 c 471 s 1 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable activity, but does not include any commercial fund raiser or commercial fund-raising entity as defined in this section. "Charitable" (a) is not limited to its common law meaning unless the context clearly requires a narrower meaning; (b) does not include religious or political activities; and (c) includes, but is not limited to, educational, recreational, social, patriotic, legal defense, benevolent, and health causes.

(3) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(4) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights less the reasonable purchase price to the charitable organization of any such tangible merchandise, rights, or services resold by the organization, and not merely that portion of the purchase price to be applied to a charitable purpose.

(5) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation. Cost of solicitation does not include the reasonable purchase price to the charitable organization of any tangible goods or services resold by the organization as a part of its fund raising activities.

(6) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(7) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(8) "Commercial fund raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, the following shall not be deemed a commercial fund raiser or "commercial fund-raising entity": (a) Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives any contribution for or on behalf of any such charitable organization; and (b) a bona fide officer or other employee of a charitable organization.

(9) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(10) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable or religious purposes.

(11) "Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, or expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in the state of Washington.

(12) "Political activities" means those activities subject to chapter 42.17 RCW or the Federal Elections Campaign Act of 1971, as amended.

(13) "Religious activities" means those religious, evangelical, or missionary activities under the direction of a religious organization duly organized and

operating in good faith that are entitled to receive a declaration of current tax exempt status for religious purposes from the United States government and the duly organized branches or chapters of those organizations.

(14) "Secretary" means the secretary of state.

(15) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(16) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(a) Any appeal is made for any charitable purpose; or

(b) The name of any charitable organization is used as an inducement for consummating the sale; or

(c) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission are specifically excluded and shall not be deemed a solicitation under this chapter.

**Sec. 2.** RCW 19.09.075 and 1993 c 471 s 3 are each amended to read as follows:

An application for registration as a charitable organization shall be submitted in the form prescribed by rule by the secretary, containing, but not limited to, the following:

(1) The name, address, and telephone number of the charitable organization;

(2) The name(s) under which the organization will solicit contributions;

(3) The name, address, and telephone number of the officers of or persons accepting responsibility for the organization;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(5) The purpose of the organization;

(6)(a) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status; and

(b) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(7) A solicitation report of the organization for the preceding accounting year including:

(a) The number and types of solicitations conducted;

(b) The total dollar value of support received from solicitations and from all other sources received on behalf of the charitable purpose of the charitable organization;

(c) The total amount of money applied to charitable purposes, fund raising costs, and other expenses;

(d) The name, address, and telephone number of any commercial fund raiser used by the organization;

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) The total revenue of the preceding fiscal year.

The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization or a group of charitable organizations. A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in the state of Washington.

The application shall be signed by the president, treasurer, or comparable officer of the organization (~~((whose signature shall be notarized))~~). The application shall be submitted with a nonrefundable filing fee which shall be in an amount to be established by the secretary by rule. In determining the amount of this application fee, the secretary may consider factors such as the entity's annual budget and its federal income tax status. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.

The secretary shall notify the director of veterans' affairs upon receipt of an application for registration as a charitable organization from an entity that purports to raise funds to benefit veterans of the United States military services. The director of veterans' affairs may advise the secretary and the attorney general of any information, reports, or complaints regarding such an organization.

**Sec. 3.** RCW 19.09.279 and 1993 c 471 s 21 are each amended to read as follows:

(1) The (~~((attorney general))~~) secretary may assess against any person or organization who violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) Such person or organization shall be afforded the opportunity for a hearing, upon request made to the (~~((attorney general))~~) secretary within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the attorney general may recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

**Sec. 4.** RCW 24.03.005 and 1989 c 291 s 3 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(3) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(4) "Articles of incorporation" and "articles" mean the original articles of incorporation and all amendments thereto, and includes articles of merger and restated articles.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means an individual or entity having membership rights in a corporation in accordance with the provisions of its articles or incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated in the articles or bylaws.

(8) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(9) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(10) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined that the document complies as to form with the applicable requirements of this chapter.

(11) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(12) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state and, for the purpose of documents filed electronically with the

secretary of state, in compliance with the rules adopted by the secretary of state for electronic filing.

(13) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation.

(14) "Public benefit not for profit corporation" or "public benefit nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

NEW SECTION. Sec. 5. A new section is added to chapter 24.03 RCW to read as follows:

Standards for Electronic Filing. The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

NEW SECTION. Sec. 6. A new section is added to chapter 24.03 RCW to read as follows:

Documents Submitted for Filing—Exact or Conformed Copies. A document submitted to the secretary of state for filing under this chapter must be accompanied by an exact or conformed copy of the document, unless the secretary of state provides by rule that an exact or conformed copy is not required.

Sec. 7. RCW 24.03.145 and 1982 c 35 s 83 are each amended to read as follows:

~~((Duplicate originals of))~~ The articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on ~~((each of such duplicate originals))~~ the articles the word "Filed" and the effective date of the filing ~~((thereof))~~.

(2) File ~~((one of such duplicate originals))~~ the articles.

(3) Issue a certificate of incorporation ~~((to which the other duplicate original shall be affixed))~~.

The certificate of incorporation together with ~~((the duplicate original))~~ an exact or conformed copy of the articles of incorporation ~~((affixed thereto by the secretary of state, shall))~~ will be returned to the incorporators or their representative.

Sec. 8. RCW 24.03.175 and 1982 c 35 s 86 are each amended to read as follows:

~~((Duplicate originals of))~~ The articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on ~~((each of such duplicate originals))~~ the articles the word "Filed," and the effective date of the filing ~~((thereof))~~.

(2) File ~~((one of such duplicate originals))~~ the articles.

~~((3) Issue a certificate of amendment to which the other duplicate original shall be affixed.))~~

The ~~((certificate of amendment, together with the duplicate original))~~ exact or conformed copy of the articles of amendment bearing the filing endorsement affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

**Sec. 9.** RCW 24.03.183 and 1986 c 240 s 29 are each amended to read as follows:

A domestic corporation may at any time restate its articles of incorporation by a resolution adopted by the board of directors. A corporation may amend and restate in one resolution, but may not present the amendments and restatement for filing by the secretary in a single document. Separate articles of amendment, under RCW 24.03.165 and articles of restatement, under this section, must be presented notwithstanding the corporation's adoption of a single resolution of amendment and restatement.

Upon the adoption of the resolution, restated articles of incorporation shall be executed in duplicate by the corporation by one of its officers. The restated articles shall set forth all of the operative provisions of the articles of incorporation together with a statement that the restated articles of incorporation correctly set forth without change the provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

~~((Duplicate originals of))~~ The restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, the secretary of state shall, when all fees required by this title have been paid:

(1) Endorse on ~~((each duplicate original))~~ the articles the word "Filed" and the date of the filing ~~((thereof))~~;

(2) File ~~((one duplicate original, and~~

~~—((3) Issue a restated certificate of incorporation, to which the other duplicate original shall be affixed))~~ the restated articles.

~~((The restated certificate of incorporation, together with the duplicate original))~~ An exact or conformed copy of the restated articles of incorporation bearing the endorsement affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the filing of the restated articles of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

**Sec. 10.** RCW 24.03.200 and 1986 c 240 s 33 are each amended to read as follows:

(1) Upon such approval, articles of merger or articles of consolidation shall be executed (~~(in duplicate)~~) by each corporation by an officer of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) (~~(Duplicate originals of)~~) The articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(a) Endorse on (~~(each of such duplicate originals)~~) the articles of merger or consolidation the word "Filed," and the date of the filing (~~(thereof)~~);

(b) File (~~(one of such duplicate originals, and~~

~~—(c) Issue a certificate)~~ the articles of merger or (~~(a certificate of)~~) consolidation (~~(to which the other duplicate original shall be affixed)~~).

~~((The certificate of merger or certificate of consolidation, together with the duplicate original))~~ An exact or conformed copy of the articles of merger or articles of consolidation bearing the filing endorsement affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

**Sec. 11.** RCW 24.03.245 and 1982 c 35 s 94 are each amended to read as follows:

~~((Duplicate originals of such))~~ Articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, the secretary of state shall, when all requirements have been met as in this chapter prescribed:

(1) Endorse on (~~(each of such duplicate originals)~~) the articles of dissolution the word "Filed," and the effective date of the filing (~~(thereof)~~).



(2) File ~~((one of such duplicate originals. —(3) Issue a certificate))~~ the articles of dissolution ~~((to which the other duplicate original shall be affixed)).~~

The ~~((certificate))~~ exact or conformed copy of the articles of dissolution, ((together with the duplicate original of the articles of dissolution)) bearing the filing endorsement affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the filing of such articles of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter.

**Sec. 12.** RCW 24.03.325 and 1986 c 240 s 45 are each amended to read as follows:

A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) If the name of the corporation contains the word "corporation," "company," "incorporated," or "limited," or contains an abbreviation of one of such words, then the name of the corporation which it elects for use in this state.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation.

(5) A statement that a registered agent has been appointed and the name and address of such agent, and that a registered office exists and the address of such registered office is identical to that of the registered agent.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

The application shall be made in the form prescribed by the secretary of state and shall be executed ~~((in duplicate))~~ by the corporation by one of its officers.

The application shall be accompanied by a certificate of good standing which has been issued no more than sixty days before the date of filing of the application for a certificate of authority to do business in this state and has been certified to by the proper officer of the state or country under the laws of which the corporation is incorporated.

**Sec. 13.** RCW 24.03.330 and 1986 c 240 s 46 are each amended to read as follows:

~~((Duplicate originals of))~~ The application of the corporation for a certificate of authority shall be delivered to the secretary of state.

If the secretary of state finds that such application conforms to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such documents the word "Filed," and the date of the filing (~~(thereof)~~).

(2) File (~~(one of such duplicate originals of)~~) the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to conduct affairs in this state (~~(to which the other duplicate original application shall be affixed)~~).

~~((The certificate of authority, together with the duplicate original))~~ An exact or conformed copy of the application bearing the filing endorsement affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

**Sec. 14.** RCW 24.03.375 and 1982 c 35 s 105 are each amended to read as follows:

~~((Duplicate originals of such))~~ An application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary of state shall, when all requirements have been met as in this chapter prescribed:

(1) Endorse on (~~(each of such duplicate originals)~~) the application the word "Filed," and the effective date of the filing (~~(thereof)~~).

(2) File (~~(one of such duplicate originals:~~

~~—(3) Issue a certificate of)~~ the application for withdrawal (~~(to which the other duplicate original shall be affixed)~~).

~~((The certificate of withdrawal, together with the duplicate original))~~ An exact or conformed copy of the application for withdrawal bearing the filing endorsement affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the filing of such application of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

**NEW SECTION.** **Sec. 15.** A new section is added to chapter 25.15 RCW to read as follows:

**Standards for Electronic Filing.** The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

**Sec. 16.** RCW 25.15.020 and 1996 c 231 s 6 are each amended to read as follows:

(1) Each limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural

route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address (~~in the same city as the registered office~~) in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this state whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a foreign corporation, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent.

(2) A limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (1) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (2) of this section and recites that the limited liability company has been notified of the change.

(4) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed.

**Sec. 17.** RCW 25.15.085 and 2001 c 307 s 3 are each amended to read as follows:

(1) Each document required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner, or in compliance with the rules established to facilitate electronic filing under section 15 of this act, except as set forth in RCW 25.15.105(4)(b):

(a) Each original certificate of formation must be signed by the person or persons forming the limited liability company;

(b) A reservation of name may be signed by any person;

(c) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;

(d) A registration of name must be signed by any member or manager of the foreign limited liability company;

(e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(f) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to RCW 25.15.295(1);

(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and

(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company.

(2) Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

**Sec. 18.** RCW 25.15.095 and 2001 c 307 s 4 are each amended to read as follows:

(1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter, except as set forth under RCW 25.15.105 or unless a duplicate is not required under rules adopted under section 15 of this act, shall be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

(a) Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(b) Retain the signed original in the secretary of state's files; and

(c) Return the duplicate copy to the person who filed it or the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the secretary of state subsequently determines that:

(a) The documents as delivered conform to the filing provisions of this chapter; or

(b) Within twenty days after notification of nonconformance is given by the secretary of state to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(3) If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection (2)(b) of this section, the documents shall not be filed.

(4) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or articles of merger which act as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in RCW 25.15.290, the certificate of formation is canceled.

**Sec. 19.** RCW 25.15.325 and 1998 c 102 s 10 are each amended to read as follows:

(1) A foreign limited liability company may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the

office of the secretary of state from the names described in RCW 23B.04.010 and 25.10.020, and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of state shall authorize use of the name applied for if the other corporation, limited liability company, limited liability partnership, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address (~~in the same city as the registered office~~) in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

(3) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the foreign limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(4) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(5) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the foreign limited liability company at its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**Sec. 20.** RCW 43.07.170 and 1982 c 35 s 191 are each amended to read as follows:

(1) If the secretary of state determines that the public interest and the purpose of the (~~corporation~~) filing and registration statutes administered by the secretary of state would be best served by a filing system utilizing microfilm, microfiche, (~~or~~) methods of reduced-format document recording, or electronic or online filing, the secretary of state may, by rule adopted under chapter 34.05 RCW, establish such a filing system.

(2) In connection (~~therewith~~) with a reduced-format filing system, the secretary of state may eliminate any requirement for a duplicate original filing copy, and may establish reasonable requirements concerning paper size, print legibility, and quality for photo-reproduction processes as may be necessary to ensure utility and readability of any reduced-format filing system.

(3) In connection with an electronic or online filing system, the secretary of state may eliminate any requirement for a duplicate original filing copy and may establish reasonable requirements for electronic filing, including but not limited to signature technology, file format and type, delivery, types of filing that may be completed electronically, and methods for the return of filed documents.

NEW SECTION. **Sec. 21.** Section captions used in this act are not part of the law.

Passed the House February 16, 2002.  
Passed the Senate March 8, 2002.  
Approved by the Governor March 21, 2002.  
Filed in Office of Secretary of State March 21, 2002.

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**CHAPTER 75**

[House Bill 2320]

**CAMPAIGN CONTRIBUTIONS—REPORTS**

AN ACT Relating to reporting contributions under the public disclosure act; and amending RCW 42.17.020 and 42.17.080.

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

**Sec. 1.** RCW 42.17.020 and 1995 c 397 s 1 are each amended to read as follows:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(3) "Ballot proposition" means any "measure" as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(4) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(5) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29.24 RCW;

(b) The governing body of the state organization of a major political party, as defined in RCW 29.01.090, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(6) "Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.



(7) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(8) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(9) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(10) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(11) "Commission" means the agency established under RCW 42.17.350.

(12) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(13) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(14)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of December after the date of the last previous general election for the office that the candidate seeks and ending on November 30th after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on November 30th after the special election.

(19) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(20) "Final report" means the report described as a final report in RCW 42.17.080(2).

(21) "General election" for the purposes of RCW 42.17.640 means the election that results in the election of a person to a state office. It does not include a primary.

(22) "Gift," is as defined in RCW 42.52.010.

(23) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household. For the purposes of RCW 42.17.640 through 42.17.790, "immediate family" means an individual's spouse, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse and the spouse of any such person.

(24) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(25)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family as defined for purposes of RCW 42.17.640 through 42.17.790, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(26) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(27) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(28) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(29) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(30) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(31) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(32) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(33) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(34) "Primary" for the purposes of RCW 42.17.640 means the procedure for nominating a candidate to state office under chapter 29.18 or 29.21 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29.18 or 29.21 RCW.

(35) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(36) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(37) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29.82.015 and ending thirty days after the recall election.

(38) "State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(39) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(40) "State official" means a person who holds a state office.

(41) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(42) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires.

**Sec. 2.** RCW 42.17.080 and 2000 c 237 s 2 are each amended to read as follows:

(1) On the day the treasurer is designated, each candidate or political committee shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the treasurer resides, in addition to any statement of organization required under RCW 42.17.040 or 42.17.050, a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters, and if there is no office or headquarters then in the county in which the treasurer resides, a report containing the information required by RCW 42.17.090:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election: PROVIDED, That this report shall not be required following a primary election from:

(i) A candidate whose name will appear on the subsequent general election ballot; or

(ii) Any continuing political committee; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of the fifth business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of the one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special or general election is held and ending on the date of that election, each (~~Friday~~) Monday the treasurer shall file with the commission and the appropriate county elections officer a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) If a city requires that candidates or committees for city offices file reports with a city agency, the candidate or treasurer so filing need not also file the report with the county auditor or elections officer.

(5) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17.040, the books of account must be open for public inspection as follows:

(a) For at least two consecutive hours between 8:00 a.m. and 8:00 p.m. on the eighth day immediately before the election, except when it is a legal holiday, in which case on the seventh day immediately before the election, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission; and

(b) By appointment for inspections to be conducted at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any other day from the seventh day through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days in the week prior to the election. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(9) After January 1, 2002, a report that is filed with the commission electronically need not also be filed with the county auditor or elections officer.

(10) The commission shall adopt administrative rules establishing requirements for filer participation in any system designed and implemented by the commission for the electronic filing of reports.

Passed the House February 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

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## CHAPTER 76

[House Bill 2358]

### ANNEXATION OF TERRITORY

AN ACT Relating to annexation of unincorporated territory with boundaries contiguous to two municipal corporations; and amending RCW 57.24.210.

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



**Sec. 1.** RCW 57.24.210 and 1996 c 230 s 912 are each amended to read as follows:

When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two municipal corporations providing either water or sewer service, one of which is a water-sewer district, the legislative authority of either of the contiguous municipal corporations may resolve to annex such territory to that municipal corporation, provided a majority of the legislative authority of the other contiguous municipal corporation concurs. In such event, the municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. For purposes of this section, "municipal corporation" means a water-sewer district, city, or town.

Passed the House February 12, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

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## CHAPTER 77

[House Bill 2401]

### DEPARTMENT OF NATURAL RESOURCES' EMPLOYEES—ASSAULT VICTIMS— REIMBURSEMENT

AN ACT Relating to assaults to employees of the department of natural resources; and amending RCW 72.01.045 and 72.09.240.

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

**Sec. 1.** RCW 72.01.045 and 1990 c 153 s 1 are each amended to read as follows:

(1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse employees of the department of social and health services, the department of natural resources, and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, the commissioner of public lands, or the director of the department of veterans affairs, or the secretary's, commissioner's, or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, commissioner, director, or applicable designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, commissioner, director, or applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the employing department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

**Sec. 2.** RCW 72.09.240 and 1988 c 149 s 1 are each amended to read as follows:

(1) In recognition of prison overcrowding and the hazardous nature of employment in state correctional institutions and offices, the legislature hereby provides a supplementary program to reimburse employees of the department of corrections and the department of natural resources for some of their costs

attributable to their being the victims of offender assaults. This program shall be limited to the reimbursement provided in this section.

(2) An employee is only entitled to receive the reimbursement provided in this section if the secretary of corrections or the commissioner of public lands, or the secretary's or commissioner's designee, finds that each of the following has occurred:

(a) An offender has assaulted the employee while the employee is performing the employee's official duties and as a result thereof the employee has sustained injuries which have required the employee to miss days of work; and

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment.

(3) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(4) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(5) The employee shall not be entitled to the reimbursement provided in subsection (3) of this section for any workday for which the secretary or the commissioner of public lands, or the secretary's or commissioner's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) The reimbursement shall only be made for absences which the secretary or the commissioner of public lands, or the secretary's or commissioner's designee, believes are justified.

(7) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(8) All reimbursement payments required to be made to employees under this section shall be made by the department of corrections or the department of natural resources. The payments shall be considered as a salary or wage expense and shall be paid by the department of corrections or the department of natural resources in the same manner and from the same appropriations as other salary and wage expenses of the department of corrections or the department of natural resources.

(9) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

(10) For the purposes of this section, "offender" means: (a) ~~((Inmate as defined in RCW 72.09.020, (b)))~~ Offender as defined in RCW 9.94A.030~~((:));~~; and ~~((~~(b)~~))~~ (b) any other person in the custody of or subject to the jurisdiction of the department of corrections.

Passed the House February 13, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 78

[Substitute House Bill 2415]

### PUBLIC SCHOOL PRINCIPALS AND VICE-PRINCIPALS

AN ACT Relating to qualifications for public school principals and vice principals; and amending RCW 28A.400.100.

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

**Sec. 1.** RCW 28A.400.100 and 1977 ex.s. c 272 s 1 are each amended to read as follows:

School districts may employ public school principals and/or vice principals to supervise the operation and management of the school to which they are assigned. Such persons shall hold valid ~~((teacher and))~~ administrative certificates and shall hold or have held either valid teacher certificates or valid educational staff associate certificates. Persons who hold or have held valid educational staff associate certificates must also have demonstrated successful school-based experience in an instructional role with students. Persons whose certificates were revoked, suspended, or surrendered may not be employed as public school principals or vice principals. In addition to such other duties as shall be prescribed by law and by the job description adopted by the board of directors, each principal shall:

(1) Assume administrative authority, responsibility and instructional leadership, under the supervision of the school district superintendent, and in accordance with the policies of the school district board of directors, for the planning, management, supervision and evaluation of the educational program of the attendance area for which he or she is responsible.

(2) Submit recommendations to the school district superintendent regarding appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the attendance area for which he or she is responsible.

(3) Submit recommendations to the school district superintendent regarding the fiscal needs to maintain and improve the instructional program of the attendance area for which he or she is responsible.

(4) Assume administrative authority and responsibility for the supervision, counseling and discipline of pupils in the attendance area for which he or she is responsible.

Passed the House February 13, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

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## CHAPTER 79

[Substitute House Bill 2437]

### DOWNTOWN AND NEIGHBORHOOD COMMERCIAL DISTRICTS

AN ACT Relating to downtown and neighborhood commercial districts; and adding a new chapter to Title 35 RCW.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds:

(a) The continued economic vitality of downtown and neighborhood commercial districts in our state's cities is essential to community preservation, social cohesion, and economic growth;

(b) In recent years there has been a deterioration of downtown and neighborhood commercial districts in both rural and urban communities due to a shifting population base, changes in the marketplace, and greater competition from suburban shopping malls, discount centers, and through the internet;

(c) This decline has eroded the ability of businesses and property owners to renovate and enhance their commercial and residential properties;

(d) In many areas of the state, downtown and neighborhood commercial areas are burdened further by deteriorating buildings, vacant building that cannot be legally occupied, and vacant brownfield infill sites which pose significant health and safety problems to tenants and pedestrians, and constitute a significant blight and detrimental impact on the health, safety, and welfare of the community, as well as its economic health;

(e) Business owners in these districts need to maintain their local economies in order to provide goods and services to adjacent residents, to provide employment opportunities, to restore blighted properties, and to avoid disinvestment and economic dislocations, and have developed downtown and neighborhood commercial district revitalization programs to address these problems; and

(f) It is in the best interest of the state of Washington to stop the decay of community areas and to promote and facilitate the orderly redevelopment of these areas.

(2) It is the intent of the legislature to establish a program to:

(a) Provide for the allocation of a portion of locally imposed excise taxes to assist local governments in the financing of needed health and safety improvements, public improvements, and other public investments, to encourage private development and to enhance and revitalize neighborhood business districts and downtown areas; and

(b) Provide technical assistance and training to local governments, business organizations, downtown and neighborhood commercial district organizations, and business and property owners to accomplish community and economic revitalization and development of business districts.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Local retail sales and use tax" means the tax levied by a city or town under RCW 82.14.030, excluding that portion which a county is entitled to receive under RCW 82.14.030.

(2) "Local retail sales and use tax increment revenue" means that portion of the local retail sales and use tax collected in each year upon any retail sale or any use of an article of tangible personal property within a downtown or neighborhood commercial district that is in excess of the amount of local retail sales and use tax collected on sales or uses within the downtown or neighborhood commercial district in the year preceding.

(3) "Downtown or neighborhood commercial district" means (a) an area or areas designated by the legislative authority of a city or town with a population over one hundred thousand and that are typically limited to the pedestrian core area or the central commercial district and compact business districts that serve specific neighborhoods within the city or town; or (b) commercial areas designated as main street areas by the office of trade and economic development.

(4) "Community revitalization project" means:

(a) Health and safety improvements authorized to be publicly financed under chapter 35.80 or 35.81 RCW;

(b) Publicly owned or leased facilities within the jurisdiction of a local government which the sponsor has authority to provide; and

(c) Expenditure for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within a downtown or neighborhood commercial district including the management and promotion of retail trade activities in the district;

(ii) Providing maintenance and security for common or public areas in the downtown or neighborhood commercial district;

(iii) Historic preservation activities authorized under RCW 35.21.395; or

(iv) Project design and planning, land acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, operation, and installation of a public facility; the costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; the costs of complying with this chapter and other applicable law; and the administrative costs reasonably necessary and related to these costs.

**NEW SECTION. Sec. 3.** Local retail sales and use tax increment revenue, or any portion thereof, may be applied as follows:

(1) To pay downtown or neighborhood commercial district community revitalization costs;

(2) To pay into bond redemption funds established to pay the principal and interest on general obligation or revenue bonds issued to finance a downtown or neighborhood commercial district community revitalization project;

(3) In combination with any other public or private funds available to the city or town for the purposes provided in this section; or

(4) To pay any combination of costs under subsection (1), (2), or (3) of this section.

**NEW SECTION. Sec. 4.** (1) The legislative authority of a city or town may authorize the use of local sales and use tax increment revenue for any purpose authorized in this chapter within the boundaries of a downtown or one or more neighborhood commercial districts.

(2) Prior to authorizing the use of local sales and use tax increment revenue, the legislative authority must designate the boundaries of each downtown or neighborhood commercial district.

(3) The legislative authority of a city or town may choose to pool the local sales and use tax increment revenue collected in the various downtown and neighborhood commercial districts within the city or town for the purposes authorized in this chapter.

**NEW SECTION. Sec. 5.** A city or town shall determine at its own cost the amount of local sales and use tax increment revenue that may be generated in the downtown and neighborhood commercial districts it designates. The department of revenue may, at its discretion, provide advice or other assistance to cities and towns to assist in determining local sales and use tax increment revenue.

**NEW SECTION. Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 7.** Sections 1 through 6 of this act constitute a new chapter in Title 35 RCW.

Passed the House February 12, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 80

[House Bill 2438]

### RUNNING START—THE EVERGREEN STATE COLLEGE

AN ACT Relating to the participation in the running start program by institutions of higher education; and amending RCW 28A.600.300.

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

**Sec. 1.** RCW 28A.600.300 and 1994 c 205 s 1 are each amended to read as follows:

For the purposes of RCW 28A.600.310 through 28A.600.400, "participating institution of higher education" or "institution of higher education" means:

- (1) A community or technical college as defined in RCW 28B.50.030; and
- (2) Central Washington University, Eastern Washington University, ~~((and))~~ Washington State University, and The Evergreen State College, if the institution's governing board decides to participate in the program in RCW 28A.600.310 through 28A.600.400.

Passed the House February 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

**CHAPTER 81**

[House Bill 2467]

**COUNTY TREASURERS**

AN ACT Relating to distribution of taxes by the county treasurer; and amending RCW 84.56.230.

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

**Sec. 1.** RCW 84.56.230 and 1991 c 245 s 22 are each amended to read as follows:

On the first day of each month the county treasurer shall distribute pro rata to those taxing districts for which the county treasurer also serves as the district treasurer, according to the rate of levy for each fund, the amount collected as consolidated tax during the preceding month: PROVIDED, HOWEVER, Tbat the county treasurer, at his or her option, may distribute the total amount of such taxes collected according to the ratio that the levy of taxes made for each taxing district in the county bears to such total amount collected. On or before the tenth day of each month the county treasurer shall remit to the respective city treasurers ~~((the cities'))~~ and all other taxing districts for which the county treasurer does not serve as district treasurer, their pro rata share of all taxes collected for the previous month as provided for in RCW 36.29.110.

Passed the House February 11, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

**CHAPTER 82**

[Engrossed Substitute House Bill 2470]

**PLUMBING CONTRACTORS**

AN ACT Relating to plumbing contractors; amending RCW 18.106.010, 18.106.020, 18.106.180, 18.106.250, and 18.27.200; adding a new section to chapter 18.106 RCW; and prescribing penalties.



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

**Sec. 1.** RCW 18.106.010 and 2001 c 281 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 meaning:

(1) "Advisory board" means the state advisory board of plumbers;

(2) "Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of this chapter;

(3) "Department" means the department of labor and industries;

~~((3))~~ (4) "Director" means the director of department of labor and industries;

~~((4))~~ (5) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter;

~~((5))~~ (6) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems;

~~((6))~~ (7) "Medical gas piping installer" means a journeyman plumber who has been issued a medical gas piping installer endorsement;

~~((7))~~ (8) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building. Installation in a water system of water softening or water treatment equipment is not within the meaning of plumbing as used in this chapter;

~~((8))~~ (9) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to:

(a) Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories; or

(b) Maintenance and repair of backflow prevention assemblies.

**Sec. 2.** RCW 18.106.020 and 1997 c 326 s 3 are each amended to read as follows:

(1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. A trainee must be supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit, as specified in RCW 18.106.070. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. ~~((For the purposes of this section, "contractor" means any person or body of persons, corporate or otherwise, engaged in any work covered by the provisions of this chapter, chapter 18.27 RCW, or chapter 19.28 RCW, by way of trade or business. However, in no~~

~~case shall~~) This section does not apply to a contractor who is contracting for work on his or her own residence.

(2) No person may engage in or offer to engage in medical gas piping installation without having a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement. A trainee may engage in medical gas piping installation if he or she has a training certificate and is supervised by a person with a medical gas piping installer endorsement. No contractor may employ a person to engage in or offer to engage in medical gas piping installation unless the person employed has a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement.

(3) No contractor may advertise, offer to do work, submit a bid, or perform any work under this chapter without being registered as a contractor under chapter 18.27 RCW.

(4) Violation of (~~subsection (1) or (2) of~~) this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of (~~subsection (1) or (2) of~~) this section or employs a person in violation of (~~subsection (1) or (2) of~~) this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of (~~subsection (1) or (2) of~~) this section or at which a person is employed in violation of (~~subsection (1) or (2) of~~) this section is a separate infraction.

(~~(4)~~) (5) Notices of infractions for violations of (~~subsection (1) or (2) of~~) this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of (~~subsection (1) or (2) of~~) this section;

(b) The contractor in violation of (~~subsection (1) or (2) of~~) this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of (~~subsection (1) or (2) of~~) this section.

**Sec. 3.** RCW 18.106.180 and 2000 c 171 s 27 are each amended to read as follows:

(1) An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020(~~(4)~~) if:

(a) A person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of:

(i) Having a certificate or permit issued by the department in accordance with this chapter, or (~~of~~) being supervised by a person who has such a certificate or permit; and

(ii) Being registered as a contractor as required under chapter 18.27 RCW or this chapter, or being employed by a person who is registered as a contractor;

(b) A person who employs anyone, or offers or advertises to employ anyone, to do plumbing work fails to produce evidence of being registered as a contractor as required under chapter 18.27 RCW or this chapter; or

(c) A contractor violates section 5 of this act.

(2) A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department or sent by certified mail to the last known address provided to the department of the person named in the notice.

**Sec. 4.** RCW 18.106.250 and 2000 c 171 s 28 are each amended to read as follows:

(1) The administrative law judge shall conduct notice of infraction cases under this chapter pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued:

(a) The defendant who was issued a notice of infraction authorized by RCW 18.106.020(~~((4))~~) (5)(a) had a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who has such a certificate or permit, or was exempt from this chapter under RCW 18.106.150; or

(b) For the defendant who was issued a notice of infraction authorized by RCW 18.106.020(~~((4))~~) (5) (b) or (c), the person employed or supervised by the defendant has a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who had such a certificate or permit, (~~((or))~~) was exempt from this chapter under RCW 18.106.150, or was registered as a contractor under chapter 18.27 RCW.

(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.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 18.106 RCW to read as follows:

(1) Contractors shall accurately verify and attest to the trainee hours worked by plumbing trainees on behalf of the contractor and that all training hours were under the supervision of a certified plumber and within the proper ratio, and shall provide the supervising plumbers' names and certificate numbers. However, contractors are not required to identify which hours a trainee works with a specific certified plumber.

(2) The department may audit the records of a contractor that has verified the hours of experience submitted by a plumbing trainee to the department under RCW 18.106.030 in the following circumstances: Excessive hours were reported; hours were reported outside the normal course of the contractor's business; or for other

similar circumstances in which the department demonstrates a likelihood of excessive or improper 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 a contractor under the provisions of this section is confidential and is not open to public inspection under chapter 42.17 RCW.

(3) Violation of this section by a contractor is an infraction.

**Sec. 6.** RCW 18.27.200 and 1997 c 314 s 14 are each amended to read as follows:

(1) It is a violation of this chapter and an infraction for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor’s registration is suspended or revoked; ~~(or)~~

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor;  
or

(d) If the contractor is a contractor as defined in RCW 18.106.010, violate section 5 of this act.

(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor’s registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor’s registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction.

Passed the House February 15, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

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**CHAPTER 83**

[House Bill 2471]

**DISTRICT COURT JUDGES—SUPREME COURT RECOMMENDATIONS**

AN ACT Relating to the methodology of determining the number of district court judges; and amending RCW 3.34.020.

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

**Sec. 1.** RCW 3.34.020 and 1997 c 41 s 3 are each amended to read as follows:

(1) Any change in the number of full and part-time district judges after January 1, 1992, shall be determined by the legislature after receiving a recommendation from the supreme court. The supreme court shall make its recommendations to the legislature based on ~~((a weighted caseload))~~ an objective workload analysis that takes into account ~~((the following:~~

- ~~— (a) The extent of time that existing judges have available to hear cases in that court;~~
- ~~— (b) A measurement of the judicial time needed to process various types of cases;~~
- ~~— (c) A determination of the time required to process each type of case to the individual court workload;~~
- ~~— (d) A determination of the amount of a judge's annual work time that can be devoted exclusively to processing cases; and~~
- ~~— (e) An assessment of judicial resource needs, including annual case filings, and case weights and the judge year value determined under the weighted caseload method)) available judicial resources and the caseload activity of each court.~~

(2) The administrator for the courts, under the supervision of the supreme court, may consult with the board of judicial administration and the district and municipal court judge's association in developing the procedures and methods of applying the ~~((weighted caseload))~~ objective workload analysis.

(3) For each recommended change from the number of full and part-time district judges in any county as of January 1, 1992, the administrator for the courts, under the supervision of the supreme court, shall complete a judicial impact note detailing any local or state cost associated with such recommended change.

(4) If the legislature approves an increase in the base number of district judges in any county as of January 1, 1992, such increase in the base number of district judges and all related costs may be paid for by the county from moneys provided under RCW 82.14.310, and any such costs shall be deemed to be expended for criminal justice purposes as provided in RCW 82.14.315, and such expenses shall not constitute a supplanting of existing funding.

(5)(a) A county legislative authority that desires to change the number of full or part-time district judges from the base number on January 1, 1992, must first request the assistance of the supreme court. The administrator for the courts, under the supervision of the supreme court, shall conduct ~~((a weighted caseload))~~ an objective workload analysis and make a recommendation of its findings to the legislature for consideration as provided in this section.

(b) The legislative authority of any county may change a part-time district judge position to a full-time position.

Passed the House February 14, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 84

[Substitute House Bill 2495]

FIRE DISTRICTS—LEVIES

AN ACT Relating to updating outdated fire district statutes to increase efficiency; and amending RCW 52.16.160.

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

**Sec. 1.** RCW 52.16.160 and 1985 c 112 s 1 are each amended to read as follows:

Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, and in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and in addition to any levy authorized by RCW 52.16.130, 52.16.140 or any other statute, ~~((if in any county where a township has never been formed or where there are one or more townships in existence making annual tax levies and such township or townships are disorganized as a result of a county-wide disorganization procedure prescribed by statute and is no longer making any tax levy, or any township or townships for any other reason no longer makes any tax levy;))~~ the board of fire commissioners of any fire protection district within such county, which fire protection district has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee, is hereby authorized to levy each year an ad valorem tax on all taxable property within such district of not to exceed fifty cents per thousand dollars of assessed value, which levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional and/or statutory limitations.

Passed the House February 19, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 85

[Second Substitute House Bill 2511]

### ROBBERIES—FINANCIAL INSTITUTIONS

AN ACT Relating to robbery within a financial institution; amending RCW 9A.56.200; and prescribing penalties.

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

**Sec. 1.** RCW 9A.56.200 and 1975 1st ex.s. c 260 s 9A.56.200 are each amended to read as follows:

(1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

~~((a))~~ (i) Is armed with a deadly weapon; or

~~((b))~~ (ii) Displays what appears to be a firearm or other deadly weapon; or

~~((c))~~ (iii) Inflicts bodily injury; or

(b) He or she commits a robbery within and against a financial institution as defined in RCW 7.88.010 or 35.38.060.

(2) Robbery in the first degree is a class A felony.

Passed the House February 18, 2002.  
 Passed the Senate March 5, 2002.  
 Approved by the Governor March 21, 2002.  
 Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 86

[Substitute House Bill 2512]

### UNIFORM REGULATION OF BUSINESS AND PROFESSIONS

AN ACT Relating to the uniform regulation of business and professions pertaining to programs administered by the department of licensing; amending RCW 18.08.340, 18.08.380, 18.08.420, 18.08.440, 18.11.085, 18.11.095, 18.11.100, 18.11.160, 18.11.180, 18.11.200, 18.16.030, 18.16.060, 18.16.150, 18.16.175, 18.16.200, 18.39.300, 18.39.350, 18.39.410, 18.39.530, 18.43.035, 18.43.105, 18.43.110, 18.43.130, 18.85.040, 18.85.230, 18.85.261, 18.85.271, 18.96.060, 18.96.120, 18.96.140, 18.140.030, 18.140.160, 18.140.170, 18.165.160, 18.165.170, 18.170.170, 18.170.180, 18.185.110, 18.185.120, 18.185.140, 18.185.170, 18.210.020, 18.210.030, 18.210.060, 18.210.160, 18.220.040, 18.220.050, 18.220.130, 18.220.150, 19.16.120, 19.16.351, 19.31.070, 19.31.130, 19.105.350, 19.105.380, 19.105.440, 19.105.470, 19.138.120, 19.138.130, 19.138.170, 19.138.180, 19.138.200, 19.138.240, 19.158.040, 19.158.050, 42.44.030, 42.44.060, 42.44.160, 42.44.170, 42.44.190, 46.72.100, 46.72A.100, 64.36.040, 64.36.090, 64.36.100, 64.36.195, 64.36.200, 64.36.220, 64.36.230, 67.08.010, 67.08.015, 67.08.017, 67.08.090, 67.08.100, 67.08.110, 67.08.130, 67.08.140, 67.08.180, 67.08.300, 68.05.105, 68.05.170, 68.05.235, 68.05.259, 68.05.300, 68.05.310, 68.05.320, 68.05.330, 68.05.340, 68.05.350, 79A.60.480, and 79A.60.490; reenacting and amending RCW 18.145.050; adding a new section to chapter 18.08 RCW; adding a new section to chapter 18.11 RCW; adding a new section to chapter 18.16 RCW; adding a new section to chapter 18.39 RCW; adding a new section to chapter 18.43 RCW; adding a new section to chapter 18.85 RCW; adding a new section to chapter 18.96 RCW; adding new sections to chapter 18.140 RCW; adding a new section to chapter 18.145 RCW; adding a new section to chapter 18.165 RCW; adding a new section to chapter 18.170 RCW; adding a new section to chapter 18.185 RCW; adding a new section to chapter 18.210 RCW; adding a new section to chapter 18.220 RCW; adding a new section to chapter 19.16 RCW; adding a new section to chapter 19.31 RCW; adding a new section to chapter 19.105 RCW; adding a new section to chapter 19.138 RCW; adding a new section to chapter 19.158 RCW; adding a new section to chapter 42.44 RCW; adding a new section to chapter 46.72 RCW; adding a new section to chapter 46.72A RCW; adding a new section to chapter 64.36 RCW; adding a new section to chapter 67.08 RCW; adding a new section to chapter 68.05 RCW; adding a new section to chapter 79A.60 RCW; adding a new chapter to Title 18 RCW; creating a new section; repealing RCW 18.08.450, 18.39.400, 18.39.430, 18.39.440, 18.39.460, 18.39.470, 18.39.480, 18.39.490, 18.39.500, 18.39.510, 18.39.520, 18.39.540, 18.39.550, 18.43.140, 18.85.251, 18.85.360, 18.96.130, 18.140.180, 18.165.190, 18.165.200, 18.165.240, 18.165.250, 18.165.260, 18.170.190, 18.170.200, 18.170.240, 18.170.250, 18.170.260, 18.170.270, 18.185.150, 18.185.160, 18.185.180, 18.185.190, 19.16.360, 19.16.380, 19.16.400, 19.105.460, 19.138.190, 19.138.210, 19.138.220, 19.138.230, 19.138.300, 19.158.060, 64.36.180, 64.36.190, 64.36.280, 64.36.300, 67.08.120, 67.08.210, 67.08.230, 67.08.250, and 67.08.260; prescribing penalties; and providing effective dates.

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

### PART 1

**NEW SECTION. Sec. 101.** It is the intent of the legislature to consolidate disciplinary procedures for the licensed businesses and professions under the business and professions division of the department of licensing by providing a uniform disciplinary act for businesses and professions with standardized procedures for the regulation of businesses and professions and the enforcement of laws, the purpose of which is to assure the public of the adequacy of business and professional competence and conduct.

It is also the intent of the legislature that all businesses and professions newly credentialed by the state and regulated by the business and professions division of the department of licensing come under this chapter.

**NEW SECTION. Sec. 102.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means those boards specified in section 103(2)(b) of this act.

(2) "Department" means the department of licensing.

(3) "Director" means the director of the department or director's designee.

(4) "Disciplinary action" means sanctions identified in section 112 of this act.

(5) "Disciplinary authority" means the director, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under section 103 of this act.

(6) "License," "licensing," and "licensure" are deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as those terms are defined in RCW 18.118.020. Each of these terms, and the term "appointment" under chapter 42.44 RCW, are interchangeable under the provisions of this chapter.

(7) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in section 103 of this act without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual or business is qualified to practice a profession or operate a business identified in section 103 of this act without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

**NEW SECTION. Sec. 103.** (1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

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

(i) Auctioneers under chapter 18.11 RCW;

(ii) Bail bond agents under chapter 18.185 RCW;

(iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;

(iv) Commercial telephone solicitors under chapter 19.158 RCW;

(v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;

(vi) Court reporters under chapter 18.145 RCW;

(vii) Employment agencies under chapter 19.31 RCW;

(viii) For hire vehicle operators under chapter 46.72 RCW;

(ix) Limousines under chapter 46.72A RCW;



- (x) Notaries public under chapter 42.44 RCW;
- (xi) Private investigators under chapter 18.165 RCW;
- (xii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
- (xiii) Real estate appraisers under chapter 18.140 RCW;
- (xiv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
- (xv) Security guards under chapter 18.170 RCW;
- (xvi) Sellers of travel under chapter 19.138 RCW;
- (xvii) Timeshares and timeshare salespersons under chapter 64.36 RCW; and
- (xviii) Whitewater river outfitters under chapter 79A.60 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The state board of registration for architects established in chapter 18.08 RCW;
- (ii) The cemetery board established in chapter 68.05 RCW;
- (iii) The Washington state collection agency board established in chapter 19.16 RCW;
- (iv) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;
- (v) The state board of funeral directors and embalmers established in chapter 18.39 RCW;
- (vi) The state board of registration for landscape architects established in chapter 18.96 RCW; and
- (vii) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under section 112 of this act by the disciplinary authority.

**NEW SECTION. Sec. 104.** The disciplinary authority has the power to:

- (1) Adopt, amend, and rescind rules as necessary to carry out the purposes of this chapter, including, but not limited to, rules regarding standards of professional conduct and practice;
- (2) Investigate complaints or reports of unprofessional conduct and hold hearings as provided in this chapter;
- (3) Issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;
- (4) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(5) Compel attendance of witnesses at hearings;

(6) Conduct practice reviews in the course of investigating a complaint or report of unprofessional conduct, unless the disciplinary authority is authorized to audit or inspect applicants or licensees under the chapters specified in section 103 of this act;

(7) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice or business pending proceedings by the disciplinary authority;

(8) Appoint a presiding officer or authorize the office of administrative hearings, as provided in chapter 34.12 RCW, to conduct hearings. The disciplinary authority may make the final decision regarding disposition of the license unless the disciplinary authority elects to delegate, in writing, the final decision to the presiding officer;

(9) Use individual members of the boards and commissions to direct investigations. However, the member of the board or commission may not subsequently participate in the hearing of the case;

(10) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(11) Grant or deny license applications, secure the return of a license obtained through the mistake or inadvertence of the department or the disciplinary authority after providing the person so licensed with an opportunity for an adjudicative proceeding, and, in the event of a finding of unprofessional conduct by an applicant or license holder, impose any sanction against a license applicant or license holder provided by this chapter;

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

(13) Establish panels consisting of three or more members of the board or commission to perform any duty or authority within the board's or commission's jurisdiction under this chapter; and

(14) Contract with licensees, registrants, endorsement or permit holders, or any other persons or organizations to provide services necessary for the monitoring or supervision of licensees, registrants, or endorsement or permit holders who are placed on probation, whose professional or business activities are restricted, or who are for an authorized purpose subject to monitoring by the disciplinary authority. If the subject licensee, registrant, or endorsement or permit holders may only practice or operate a business under the supervision of another licensee, registrant, or endorsement or permit holder under the terms of the law regulating that occupation or business, the supervising licensee, registrant, or endorsement or permit holder must consent to the monitoring or supervision under this subsection, unless the supervising licensee, registrant, or endorsement or permit holder is, at the time, the subject of a disciplinary order.

**NEW SECTION. Sec. 105.** In addition to the authority specified in section 104 of this act, the director has the following additional authority:

(1) To employ investigative, administrative, and clerical staff as necessary for the enforcement of this chapter, except as provided otherwise by statute;

(2) Upon request of a board or commission, to appoint not more than three pro tem members as provided in this subsection. Individuals appointed as pro tem members of a board or commission must meet the same minimum qualifications as regular members of the board or commission. While serving as a pro tem board or commission member, a person so appointed has all the powers, duties, and immunities, and is entitled to the entitlements, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of a regular member of the board or commission; and

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation or adjudicative proceedings as authorized by RCW 34.05.446.

**NEW SECTION. Sec. 106.** (1) If the disciplinary authority determines, upon investigation, that there is reason to believe a violation of section 114 of this act has occurred, a statement of charge or charges may be prepared and served upon the license holder or applicant. The statement of charge or charges must be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder or applicant must file a request for a hearing with the disciplinary authority within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the disciplinary authority may enter a decision on the facts available to it.

(2) If a hearing is requested, the time of the hearing must be fixed by the disciplinary authority as soon as convenient, but the hearing may not be held earlier than thirty days after service of charges upon the license holder or applicant, unless the disciplinary authority has issued a summary suspension or summary restriction, for which a hearing may be held sooner than thirty days after service of charges.

**NEW SECTION. Sec. 107.** The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the disciplinary authority. The disciplinary authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions.

**NEW SECTION. Sec. 108.** The department shall not issue a license to any person whose license has been previously denied, revoked, or suspended by the disciplinary authority for that profession or business, except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension, or in conformity with any order of reinstatement issued by the disciplinary authority, or in accordance with the final judgment in any proceeding for review instituted under this chapter.

**NEW SECTION. Sec. 109.** An order pursuant to proceedings authorized by this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, takes effect immediately upon its being served. The order, if appealed to the court, may not be stayed pending the appeal unless the disciplinary authority or court to which the appeal is taken enters an order staying the order of the disciplinary authority, which stay shall provide for terms necessary to protect the public.

**NEW SECTION. Sec. 110.** An individual who has been disciplined or whose license has been denied by a disciplinary authority may appeal the decision as provided in chapter 34.05 RCW.

**NEW SECTION. Sec. 111.** A person whose license has been suspended or revoked under this chapter may petition the disciplinary authority for reinstatement after an interval of time and upon conditions determined by the disciplinary authority in the order. The disciplinary authority shall act on the petition in accordance with the adjudicative proceedings provided under chapter 34.05 RCW and may impose such conditions as authorized by section 112 of this act. The disciplinary authority may require successful completion of an examination as condition of reinstatement.

**NEW SECTION. Sec. 112.** (1) Upon finding unprofessional conduct, the disciplinary authority may issue an order providing for one or any combination of the following:

- (a) Revocation of the license;
  - (b) Suspension of the license for a fixed or indefinite term;
  - (c) Restriction or limitation of the practice;
  - (d) Satisfactory completion of a specific program of remedial education or treatment;
  - (e) Monitoring of the practice in a manner directed by the disciplinary authority;
  - (f) Censure or reprimand;
  - (g) Compliance with conditions of probation for a designated period of time;
  - (h) Payment of a fine for each violation found by the disciplinary authority, not to exceed five thousand dollars per violation. The disciplinary authority must consider aggravating or mitigating circumstances in assessing any fine. Funds received must be deposited in the related program account;
  - (i) Denial of an initial or renewal license application; or
  - (j) Other corrective action.
- (2) The disciplinary authority may require reimbursement to the disciplinary authority for the investigative costs incurred in investigating the matter that resulted in issuance of an order under this section, but only if any of the sanctions in subsection (1)(a) through (j) of this section is ordered.

(3) Any of the actions under this section may be totally or partly stayed by the disciplinary authority. In determining what action is appropriate, the disciplinary

authority must first consider what sanctions are necessary to protect the public health, safety, or welfare. Only after these provisions have been made may the disciplinary 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.

(4) 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 a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct. The stipulations entered into under this subsection are considered formal disciplinary action for all purposes.

**NEW SECTION. Sec. 113.** Where payment of a fine is required as a result of a disciplinary action under section 107 or 116 of this act and timely payment is not made as directed in the final order, the disciplinary authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement is in addition to any other rights the disciplinary authority may have as to any licensee ordered to pay a fine but may not be construed to limit a licensee's ability to seek judicial review under section 110 of this act. In any action for enforcement of an order of payment of a fine, the disciplinary authority's order is conclusive proof of the validity of the order of a fine and the terms of payment.

**NEW SECTION. Sec. 114.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this section abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) Advertising that is false, deceptive, or misleading;

(4) Incompetence, negligence, or malpractice that results in harm or damage to a consumer or that creates an unreasonable risk that a consumer may be harmed or damaged;

(5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;

(6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:

(a) Not furnishing any papers or documents requested by the disciplinary authority;

(b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;

(c) Not responding to a subpoena issued by the disciplinary authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;

(7) Failure to comply with an order issued by the disciplinary authority;

(8) Violating any lawful rule made by the disciplinary authority;

(9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;

(10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;

(11) Misrepresentation in any aspect of the conduct of the business or profession;

(12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

(13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this section abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130; and

(14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action.

**NEW SECTION. Sec. 115.** If a person or business regulated by this chapter violates or fails to comply with a final order issued under section 114 of this act, the attorney general, any prosecuting attorney, the director, the board or commission, or any other person may maintain an action in the name of the state of Washington to enjoin the person from violating the order or failing to comply with the order. The injunction does not relieve the offender from criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution and disciplinary action.

**NEW SECTION. Sec. 116.** (1) The disciplinary authority may investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in section 103 of this act. In the investigation of the complaints, the director has the same authority as provided the disciplinary authority under section 104 of this act.

(2) The disciplinary authority may issue a notice of intent to issue a cease and desist order to any person whom the disciplinary authority has reason to believe is engaged in the unlicensed practice of a profession or operation of a business for which a license is required by the chapters specified in section 103 of this act. The person to whom such a notice is issued may request an adjudicative proceeding to contest the allegations. The notice shall include a brief, plain statement of the alleged unlicensed activities. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the director 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 disciplinary authority makes a final determination that a person has engaged or is engaging in unlicensed practice, the director may issue a permanent cease and desist order. In addition, the disciplinary authority may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in the unlicensed practice of a profession or operation of a business for which a license is required by one or more of the chapters specified in section 103 of this act. The proceeds of such a fine shall be deposited in the related program account.

(4) If the disciplinary authority makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the disciplinary authority 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. A temporary cease and desist order shall remain in effect until further order of the disciplinary authority. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the disciplinary authority may enter a permanent cease and desist order, which may include a civil fine.

(5) 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 director, a board or commission, or any person may, in accordance with the laws of this state governing injunctions, maintain an action in the name of the state of Washington to enjoin any person practicing a profession or business without a license for which a license is required by the chapters specified in section 103 of this act. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the related program account.

(7) The civil remedies in this section do not limit the ability to pursue criminal prosecution as authorized in any of the acts specified in section 103 of this act nor do the civil remedies limit any criminal sanctions.

**NEW SECTION. Sec. 117.** A person or business that violates an injunction issued under this chapter may be found in contempt of court under RCW 7.21.010. Upon a finding by a court of competent jurisdiction that the person or business is in contempt, the court may order any remedial sanction as authorized by RCW 7.21.030. Further, the court may, in addition to the remedial sanctions available under RCW 7.21.030, order the person or business to pay a civil penalty to the state in an amount not to exceed twenty-five thousand dollars, which shall be deposited in the related program account. For the purposes of this section, the superior court issuing any injunction retains jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

**NEW SECTION. Sec. 118.** A person who attempts to obtain, obtains, or attempts to maintain a license by willful misrepresentation or fraudulent representation is guilty of a gross misdemeanor.

**NEW SECTION. Sec. 119.** If the disciplinary authority has reason to believe that a license holder has committed a crime, or violated the laws of another regulatory body, the disciplinary authority may notify the attorney general or the county prosecuting attorney in the county in which the act took place, or other responsible official of the facts known to the disciplinary authority.

**NEW SECTION. Sec. 120.** The director, members of the boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary actions or other official acts performed in the course of their duties.

**NEW SECTION. Sec. 121.** This chapter does not affect the use of records, obtained from the director or the disciplinary authorities, in any existing investigation or action by any public agency. Nor does this chapter limit any existing exchange of information between the director or the disciplinary authorities and other public agencies.



NEW SECTION. **Sec. 122.** (1) This chapter applies to any conduct, acts, or conditions occurring on or after the effective date of this section.

(2) This chapter does not apply to or govern the construction of and disciplinary action for any conduct, acts, or conditions occurring prior to the effective date of this section. The conduct, acts, or conditions must be construed and disciplinary action taken according to the provisions of law existing at the time of the occurrence in the same manner as if this chapter had not been enacted.

NEW SECTION. **Sec. 123.** This chapter may be known and cited as the uniform regulation of business and professions act.

NEW SECTION. **Sec. 124.** Sections 101 through 123 of this act take effect January 1, 2003.

NEW SECTION. **Sec. 125.** Sections 101 through 124 of this act constitute a new chapter in Title 18 RCW.

## PART 2

**Sec. 201.** RCW 18.08.340 and 1985 c 37 s 5 are each amended to read as follows:

(1) The board may adopt such rules under chapter 34.05 RCW as are necessary for the proper performance of its duties under this chapter.

(2) The director shall employ an executive secretary subject to approval by the board. ~~((The director shall provide such secretarial and administrative support as may be required to carry out the purposes of this chapter.~~

~~— (3) The board or the director may conduct investigations concerning alleged violations of this chapter. In making such investigations and in all proceedings of the board under this chapter, the chairman or any member of the board acting in place of the chairman may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers, and documents. If any person refuses to obey a subpoena so issued, or refuses to testify or produce any books, records, papers, or documents so required to be produced, the board may present its petition in the superior court of Thurston county or the county in which the person resides, setting forth the facts, and thereupon the court shall, in a proper case, enter a suitable order compelling compliance with this chapter and imposing such other terms and conditions as the court finds equitable.))~~

**Sec. 202.** RCW 18.08.380 and 1985 c 37 s 9 are each amended to read as follows:

~~((1) The director may reinstate a certificate of registration to any person or a certificate of authorization to any corporation or joint stock association whose certificate has been revoked, if a majority of the board vote in favor of such reissuance, if the board finds that the circumstances or conditions that brought about the revocation are not likely to recur and that the person, corporation, or joint stockholders' association is then sufficiently trustworthy and reliable at the time~~

reinstatement is sought, and that the best interests of the public will be served by reinstatement of the registration.

—(2)) A new certificate of registration or certificate of authorization to replace any certificate lost, destroyed, or mutilated may be issued by the director. A charge, determined as provided in RCW 43.24.086, shall be made for such issuance.

**Sec. 203.** RCW 18.08.420 and 1991 c 72 s 2 are each amended to read as follows:

(1) An architect or architects may organize a corporation formed either as a business corporation under the provisions of Title 23B RCW or as a professional corporation under the provisions of chapter 18.100 RCW. For an architect or architects to practice architecture through a corporation or joint stock association organized by any person under Title 23B RCW, the corporation or joint stock association shall file with the board:

(a) The application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified under this chapter to practice architecture in this state;

(b) Its notices of incorporation and bylaws and a certified copy of a resolution of the board of directors of the corporation that designates individuals registered under this chapter as responsible for the practice of architecture by the corporation in this state and that provides that full authority to make all final architectural decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the individuals designated in the resolution. The filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract; and

(c) A designation in writing setting forth the name or names of the person or persons registered under this chapter who are responsible for the architecture of the firm. If there is a change in the person or persons responsible for the architecture of the firm, the changes shall be designated in writing and filed with the board within thirty days after the effective date of the changes.

(2) Upon the filing with the board of the application for certificate of authorization, the certified copy of the resolution, and the information specified in subsection (1) of this section, the board shall authorize the director to issue to the corporation a certificate of authorization to practice architecture in this state upon a determination by the board that:

(a) The bylaws of the corporation contain provisions that all architectural decisions pertaining to any project or architectural activities in this state shall be made by the specified architects responsible for the project or architectural activities, or other responsible architects under the direction or supervision of the architects responsible for the project or architectural activities;

(b) The applicant corporation has the ability to provide, through qualified personnel, professional services or creative work requiring architectural experience, and with respect to the architectural services that the corporation undertakes or offers to undertake, the personnel have the ability to apply special knowledge to the professional services or creative work such as consultation, investigation, evaluation, planning, design, and administration of the construction contract in connection with any public or private structures, buildings, equipment, processes, works, or projects;

(c) The application for certificate of authorization contains the professional records of the designated person or persons who are responsible;

(d) The application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural services during the preceding five-year period;

(e) The applicant corporation meets such other requirements related to professional competence in the furnishing of architectural services as may be established and promulgated by the board in furtherance of the purposes of this chapter; and

(f) The applicant corporation is possessed of the ability and competence to furnish architectural services in the public interest.

(3) Upon recommendation of the board to impose action as authorized in section 112 of this act, the director (~~((shall refuse to issue or))~~) may (~~((suspend or revoke))~~) impose the recommended action upon a certificate of authorization to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of the corporation have committed an act prohibited under RCW 18.08.440 or section 114 of this act or have been found personally responsible for misconduct under subsection (6) or (7) of this section.

(4) In the event a corporation, organized solely by a group of architects each registered under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to that corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in subsections (1) and (2) of this section. In the event the ownership of such corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners if exclusively architects, under the qualifications required by subsections (1) and (2) of this section.

(5) Any corporation authorized to practice architecture under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered architect and shall conduct their business without misconduct or malpractice in the practice of architecture as defined in this chapter.

(6) Any corporation that has been certified under this chapter and has engaged in the practice of architecture (~~((shall))~~) may have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board finds

that the corporation has committed misconduct or malpractice under RCW 18.08.440 or section 114 of this act. In such a case, any individual architect registered under this chapter who is involved in such misconduct is also subject to disciplinary measures provided in this chapter and section 112 of this act.

(7) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direction of the designated architects and shall be signed by and stamped with the official seal of the designated architects in the corporation authorized under this chapter.

(8) For each certificate of authorization issued under this section there shall be paid a certification fee and an annual certification renewal fee as prescribed by the director under RCW 43.24.086.

(9) This chapter shall not affect the practice of architecture as a professional service corporation under chapter 18.100 RCW.

**Sec. 204.** RCW 18.08.440 and 1985 c 37 s 15 are each amended to read as follows:

The board shall have the power to impose ~~((fines on any person practicing architecture in an amount not to exceed one thousand dollars for each offense and may reprimand a registrant and may suspend, revoke, or refuse to issue or renew a certificate of registration or authorization to practice architecture in this state))~~ any action listed under section 112 of this act upon the following grounds:

(1) Offering to pay, paying, or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being willfully untruthful or deceptive in any professional report, statement, or testimony;

(3) ~~((Having conviction in any court of any offense involving moral turpitude or fraud;~~

~~—(4))~~ (4) Having a financial interest in the bidding for or the performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an architect except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding architectural work for which retained, employed, or called upon to perform;

~~((5))~~ (4) Signing or permitting a seal to be affixed to any drawings or specifications that were not prepared or reviewed by the architect or under the architect's personal supervision by persons subject to the architect's direction and control; or

~~((6) Aiding or abetting any person not authorized to practice architecture under this chapter;~~

~~—(7))~~ (5) Willfully evading or trying to evade any law, ordinance, code, or regulation governing construction of buildings(~~or~~

~~—(8) Violating any provision of this chapter or any regulation adopted under it)).~~

**NEW SECTION. Sec. 205.** A new section is added to chapter 18.08 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 206.** RCW 18.11.085 and 1987 c 336 s 1 are each amended to read as follows:

Every individual, before acting as an auctioneer, shall obtain an auctioneer certificate of registration. To be licensed as an auctioneer, an individual shall meet all of the following requirements:

(1) Be at least eighteen years of age or sponsored by a licensed auctioneer.

(2) File with the department a completed application on a form prescribed by the director.

(3) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(4) Pay the auctioneer registration fee required under the agency rules adopted pursuant to this chapter.

(5) Except as otherwise provided under RCW 18.11.121, file with the department an auctioneer surety bond in the amount and form required by RCW 18.11.121 and the agency rules adopted pursuant to this chapter.

(6) Have no disqualifications under RCW 18.11.160 or section 114 of this act.

**Sec. 207.** RCW 18.11.095 and 1987 c 336 s 5 are each amended to read as follows:

Every person, before operating an auction company as defined in RCW 18.11.050, shall obtain an auction company certificate of registration.

(1) Except as provided in subsection (2) of this section, to be licensed as an auction company, a person shall meet all of the following requirements:

(a) File with the department a completed application on a form prescribed by the director.

(b) Sign a notarized statement included on the application form that all auctioneers hired by the auction company to do business in the state shall be properly registered under this chapter.

(c) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(d) Pay the auction company registration fee required under the agency rules adopted pursuant to this chapter.

(e) File with the department an auction company surety bond in the amount and form required by RCW 18.11.121 and the agency rules adopted pursuant to this chapter.

(f) Have no disqualifications under RCW 18.11.160 or section 114 of this act.

(2) An auction company shall not be charged a license fee if it is a sole proprietorship or a partnership owned by an auctioneer or auctioneers, each of whom is licensed under this chapter, and if it has in effect a surety bond or bonds or other security approved by the director in the amount that would otherwise be required for an auction company to be granted or to retain a license under RCW 18.11.121.

**Sec. 208.** RCW 18.11.100 and 1986 c 324 s 7 are each amended to read as follows:

(1) Nonresident auctioneers and auction companies are required to comply with the provisions of this chapter, chapter 18--- RCW (sections 101 through 124 of this act), and the rules of the department as a condition of conducting business in the state.

(2) The application of a nonresident under this chapter shall constitute the appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to the business of an auctioneer or an auction company.

**Sec. 209.** RCW 18.11.160 and 1997 c 58 s 814 are each amended to read as follows:

(1) No license shall be issued by the department to any person who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy, fraud, theft, receiving stolen goods, unlawful issuance of checks or drafts, or other similar offense, or to any partnership of which the person is a member, or to any association or corporation of which the person is an officer or in which as a stockholder the person has or exercises a controlling interest either directly or indirectly.

(2) ~~((The following shall be grounds for denial, suspension, or revocation of a license, or imposition of an administrative fine by the department:~~

~~— (a) Misrepresentation or concealment of material facts in obtaining a license;~~

~~— (b)) In addition to the unprofessional conduct described in section 114 of this act, the director has the authority to take disciplinary action for any of the following conduct, acts, or conditions:~~

~~(a) Underreporting to the department of sales figures so that the auctioneer or auction company surety bond is in a lower amount than required by law;~~

~~((c) Revocation of a license by another state;~~

~~— (d) Misleading or false advertising;~~

~~— (e) A pattern of substantial misrepresentations related to auctioneering or auction company business;~~

~~— (f) Failure to cooperate with the department in any investigation or disciplinary action;~~

~~— (g)) (b) Nonpayment of an administrative fine prior to renewal of a license((;~~

~~— (h) Aiding an unlicensed person to practice as an auctioneer or as an auction company)); and~~

~~((f))~~ (c) Any other violations of this chapter.

(3) The department shall immediately suspend the license 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 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.

**Sec. 210.** RCW 18.11.180 and 1986 c 324 s 14 are each amended to read as follows:

It shall be unlawful for a licensed auctioneer or licensed auction company to pay compensation in money or otherwise to anyone not licensed under this chapter to render any service or to do any act forbidden under this chapter to be rendered or performed except by licensees. The department ~~((shall))~~ may fine any person who violates this section five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense. Furthermore, the violation of this section by any licensee shall be, in the discretion of the department, sufficient cause for ~~((license suspension or revocation))~~ taking any actions listed under section 112 of this act.

**Sec. 211.** RCW 18.11.200 and 1986 c 324 s 16 are each amended to read as follows:

The director shall adopt rules for the purpose of carrying out and developing this chapter, including rules governing the conduct of ~~((investigations and))~~ inspections ~~((and the imposition of administrative penalties))~~.

NEW SECTION. **Sec. 212.** A new section is added to chapter 18.11 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 213.** RCW 18.16.030 and 1991 c 324 s 2 are each amended to read as follows:

In addition to any other duties imposed by law, including sections 104 and 105 of this act, the director shall have the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) ~~((To investigate alleged violations of this chapter and consumer complaints involving the practice of cosmetology, barbering, esthetics, or manicuring, schools offering training in these areas, and salons/shops and booth renters offering these services;~~

~~—(4) To issue subpoenas, statements of charges, statements of intent, final orders, stipulated agreements, and any other legal remedies necessary to enforce this chapter;~~

~~—(5) To issue cease and desist letters and letters of warning for infractions of this chapter;~~

~~—(6) To conduct all disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it;~~

~~—(7)) To prepare and administer or approve the preparation and administration of licensing examinations;~~

~~((8)) (4) To establish minimum safety and sanitation standards for schools, cosmetologists, barbers, manicurists, estheticians, and salons/shops;~~

~~((9)) (5) To establish minimum instruction guidelines for the training of students;~~

~~((10)) (6) To maintain the official department record of applicants and licensees;~~

~~((11) To delegate in writing to a designee the authority to issue subpoenas, statements of charges, and any other documents necessary to enforce this chapter;~~

~~—(12)) (7) To establish by rule the procedures for an appeal of an examination failure;~~

~~((13) To employ such administrative, investigative, and clerical staff as needed to implement this chapter;~~

~~—(14)) (8) To set license expiration dates and renewal periods for all licenses consistent with this chapter; and~~

~~((15)) (9) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter.~~

**Sec. 214.** RCW 18.16.060 and 1991 c 324 s 4 are each amended to read as follows:

(1) The director ~~((shall impose a fine of one thousand dollars on))~~ may take action under sections 116 and 117 of this act against any person who does any of the following without first obtaining the license required by this chapter:

(a) Except as provided in subsection (2) of this section, commercial practice of cosmetology, barbering, esthetics, manicuring, or instructing;

(b) Instructs in a school;

(c) Operates a school; or

(d) Operates a salon/shop. Each booth renter shall be considered to be operating an independent salon/shop and shall obtain a separate salon/shop license.

(2) A person licensed as a cosmetology instructor-operator may engage in the commercial practice of cosmetology without maintaining a cosmetologist license. A person licensed as a barbering instructor-operator may engage in the commercial practice of barbering without maintaining a barber license. A person licensed as a manicuring instructor-operator may engage in the commercial practice of manicuring without maintaining a manicurist license. A person licensed as an



esthetician instructor-operator may engage in the commercial practice of esthetics without maintaining an esthetician license.

**Sec. 215.** RCW 18.16.150 and 1997 c 178 s 1 are each amended to read as follows:

Schools shall be audited and inspected by the director or the director's designee for compliance with this chapter at least once a year. If the director determines that a licensed school is not maintaining the standards required according to this chapter, written notice thereof shall be given to the school. A school which fails to correct these conditions to the satisfaction of the director within a reasonable time (~~shall~~) may be subject to penalties imposed under (~~RCW 18.16.210~~) section 112 of this act.

**Sec. 216.** RCW 18.16.175 and 1997 c 178 s 2 are each amended to read as follows:

(1) A salon/shop shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop;

(c) Be operated under the direct supervision of a licensed cosmetologist except that a salon/shop that is limited to barbering may be directly supervised by a barber, a salon/shop that is limited to manicuring may be directly supervised by a manicurist, and a salon/shop that is limited to esthetics may be directly supervised by an esthetician;

(d) Any room used wholly or in part as a salon/shop shall not be used for residential purposes, except that toilet facilities may be used jointly for residential and business purposes;

(e) Meet the zoning requirements of the county, city, or town, as appropriate;

(f) Provide for safe storage and labeling of chemicals used in the practice of cosmetology;

(g) Meet all applicable local and state fire codes;

(h) Provide proof that the salon/shop is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability; and

(i) Other requirements which the director determines are necessary for safety and sanitation of salons/shops. The director may consult with the state board of health and the department of labor and industries in establishing minimum salon/shop safety requirements.

(2) A salon/shop shall post the notice to customers described in RCW 18.16.180.

(3) Upon receipt of a written complaint that a salon/shop has violated any provisions of this chapter, ~~chapter 18.---~~ RCW (sections 101 through 124 of this act), or the rules adopted under (~~this~~) either chapter, or at least once every two years, the director or the director's designee shall inspect each salon/shop. If the

director determines that any salon/shop is not in compliance with this chapter, the director shall send written notice to the salon/shop. A salon/shop which fails to correct the conditions to the satisfaction of the director within a reasonable time shall, upon due notice, be subject to the penalties imposed by the director under ~~((RCW 18.16.210))~~ section 112 of this act. The director may enter any salon/shop during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

(4) A salon/shop, including a salon/shop operated by a booth renter, shall obtain a certificate of registration from the department of revenue.

(5) This section does not prohibit the use of motor homes as mobile salon/shops if the motor home meets the health and safety standards of this section.

**Sec. 217.** RCW 18.16.200 and 1991 c 324 s 14 are each amended to read as follows:

Any applicant or licensee under this chapter may be subject to disciplinary action by the director if the licensee or applicant:

~~(1) ((Has been found guilty of a crime related to the practice of cosmetology, barbering, esthetics, manicuring, or instructing;~~

~~— (2) Has made a material misstatement or omission in connection with an original application or renewal;~~

~~— (3) Has engaged in false or misleading advertising;~~

~~— (4) Has performed services in an unsafe or unsanitary manner;~~

~~— (5) Has aided and abetted unlicensed activity;~~

~~— (6))) Has engaged in the commercial practice of cosmetology, barbering, manicuring, esthetics, or instructed in or operated a school without first obtaining the license required by this chapter;~~

~~((7))) (2) Has engaged in the commercial practice of cosmetology in a school;~~

~~((8))) (3) Has not provided a safe, sanitary, and good moral environment for students and the public(;~~

~~— (9) Has not provided records as required by this chapter;~~

~~— (10) Has not cooperated with the department in supplying records or assisting in an investigation or disciplinary procedure)); or~~

~~((11))) (4) Has violated any provision of this chapter or any rule adopted under it.~~

**NEW SECTION. Sec. 218.** A new section is added to chapter 18.16 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 219.** RCW 18.39.300 and 1989 c 390 s 7 are each amended to read as follows:

In addition to the grounds for action set forth in ~~((RCW 18.130.170 and 18.130.180))~~ section 114 of this act, the board may take the disciplinary action set

forth in (~~RCW 18.130.160~~) section 112 of this act against the funeral establishment's license, the license of any funeral director and/or the funeral establishment's certificate of registration, if the licensee or registrant:

(1) Fails to comply with any provisions of this chapter(~~(, chapter 18.130 RCW,)~~) or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts could be hazardous to purchasers or beneficiaries and the people of this state;

(3) Refuses to be examined, or refuses to submit to examination by the board when required;

(4) Fails to pay the expense of an examination; or

(5) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued execution or servicing of prearrangement funeral service contracts hazardous to purchasers, beneficiaries, or to the public.

**Sec. 220.** RCW 18.39.350 and 1989 c 390 s 11 are each amended to read as follows:

Any person who violates or fails to comply with, or aids or abets any person in the violation of, or failure to comply with any of the provisions of this chapter is guilty of a class C felony pursuant to chapter 9A.20 RCW. Any such violation constitutes an unfair practice under chapter 19.86 RCW and this chapter and conviction thereunder is grounds for license revocation under this chapter and section 112 of this act. Retail installment contracts under this chapter shall be governed by chapter 63.14 RCW.

**Sec. 221.** RCW 18.39.410 and 1994 c 17 s 3 are each amended to read as follows:

~~((The following shall constitute unprofessional conduct))~~ In addition to the unprofessional conduct described in section 114 of this act, the board may take disciplinary action and may impose any of the sanctions specified in section 112 of this act for the following conduct, acts, or conditions:

(1) Solicitation of dead human bodies by a licensee, registrant, endorsement, or permit holder, or agent, assistant, or employee of the licensee, registrant, endorsement, or permit holder whether the solicitation occurs after death or while death is impending. This chapter does not prohibit general advertising or the sale of prearrangement funeral service contracts;

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

(3) Acceptance by a licensee, registrant, endorsement, or permit holder or other employee of a funeral establishment of a commission, bonus, rebate, or gratuity in consideration of directing business to a cemetery, crematory,

mausoleum, columbarium, florist, or other person providing goods and services to the disposition of dead human bodies;

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

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

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

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

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

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

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

~~—(11) Suspension or revocation or restriction of the individual's license, registration, endorsement, or permit to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;~~

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

- ~~((13) Failure to cooperate with the board by:~~
- ~~— (a) Not furnishing any papers or documents;~~
  - ~~— (b) Not furnishing in writing a full and complete explanation covering the matters contained in a complaint filed with the board; or~~
  - ~~— (c) Not responding to subpoenas issued by the board whether or not the recipient of the subpoena is the accused in the proceeding;~~
  - ~~— (14) Failure to comply with an order issued by the board or an assurance of discontinuance entered into with the board;~~
  - ~~— (15) Aiding or abetting an unlicensed or unregistered person to practice where a license, registration, endorsement, or permit is required;~~
  - ~~— (16) Misrepresentation or fraud in any aspect of the conduct of funeral practice;~~
  - ~~— (17) Conviction of a gross misdemeanor or felony relating to this title. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96A RCW;~~
  - ~~— (18) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the board or its authorized representative or the inspector, or by the use of threats or harassment against a witness to prevent that witness from providing evidence in a disciplinary hearing or other legal action;~~
  - ~~— (19) Diminished capacity or habitual intemperance in the use of alcohol, controlled substances, or prescribed drugs that impairs, interferes, or otherwise prevents the proper performance of licensed, registered, endorsed, or permitted duties or functions;~~
  - ~~— (20)) (9) Knowingly concealing information concerning a violation of this title(;~~
  - ~~— (21) Incompetence or negligence as a licensee, registrant, endorsement, or permit holder in carrying out the duties of the profession)).~~

Sec. 222. RCW 18.39.530 and 1994 c 17 s 15 are each amended to read as follows:

~~((1) The director shall investigate a complaint concerning practice by an unlicensed person for which a license, registration, endorsement, or permit is required under this chapter. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order does not relieve the person practicing or operating a business without a license, registration, permit, or registration from criminal prosecution for the unauthorized practice or operation, but the remedy of a cease and desist order is in addition to criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced by civil contempt. This method of enforcement of the cease and~~

~~desist order may be used in addition to, or as an alternative to, provisions for enforcement or agency orders under chapter 34.05 RCW.~~

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

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

NEW SECTION. **Sec. 223.** A new section is added to chapter 18.39 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 224.** RCW 18.43.035 and 1997 c 247 s 2 are each amended to read as follows:

The board may adopt and amend bylaws establishing its organization and method of operation, including but not limited to meetings, maintenance of books and records, publication of reports, code of ethics, and rosters, and adoption and use of a seal. Four members of the board shall constitute a quorum for the conduct of any business of the board. The board may employ such persons as are necessary to carry out its duties under this chapter. It may adopt rules reasonably necessary to administer the provisions of this chapter. ~~((It may conduct investigations concerning alleged violations of this chapter or the rules adopted by the board. In making such investigations and in all proceedings under RCW 18.43.110, the chairman of the board or any member of the board acting in his place may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with this chapter and imposing such other terms and conditions as the~~

~~court may deem equitable.))~~ The board shall submit to the governor such periodic reports as may be required. A roster, showing the names and places of business of all registered professional engineers and land surveyors may be published for distribution, upon request, to professional engineers and land surveyors registered under this chapter and to the public.

**Sec. 225.** RCW 18.43.105 and 1961 c 142 s 4 are each amended to read as follows:

~~((As used in this chapter "misconduct or malpractice in the practice of engineering" shall include but not be limited to the following))~~ In addition to the unprofessional conduct described in section 114 of this act, the board may take disciplinary action for the following conduct, acts, or conditions:

(1) Offering to pay, paying or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being willfully untruthful or deceptive in any professional report, statement or testimony;

(3) Attempting to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone;

(4) Failure to state separately or to charge separately for professional engineering services or land surveying where other services or work are also being performed in connection with the engineering services;

~~((Conviction in any court of any offense involving moral turpitude;—(6)))~~ Violation of any provisions of this chapter;

~~((7)))~~ (6) Conflict of interest—Having a financial interest in bidding for or performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an engineer except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding engineering work for which retained, employed, or called upon to perform;

~~((8)))~~ (7) Nondisclosure—Failure to promptly disclose to a client or employer any interest in a business which may compete with or affect the business of the client or employer;

~~((9)))~~ (8) Unfair competition—Reducing a fee quoted for prospective employment or retainer as an engineer after being informed of the fee quoted by another engineer for the same employment or retainer;

~~((10)))~~ (9) Improper advertising—Soliciting retainer or employment by advertisement which is undignified, self-laudatory, false or misleading, or which makes or invites comparison between the advertiser and other engineers;

~~((11)))~~ (10) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing professional engineering or land surveying.

**Sec. 226.** RCW 18.43.110 and 1997 c 247 s 3 are each amended to read as follows:

The board shall have the exclusive power to ~~((fine and reprimand))~~ discipline the registrant and ~~((suspend or revoke))~~ sanction the certificate of registration of any registrant ~~((who is found guilty of:~~

~~— The practice of any fraud or deceit in obtaining a certificate of registration; or  
— Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor)).~~

Any person may ~~((prefer))~~ file a complaint alleging ~~((fraud, deceit, gross negligence, incompetency, or misconduct))~~ unprofessional conduct, as set out in section 114 of this act and RCW 18.43.105, against any registrant ~~((and)).~~ The complaint shall be in writing and shall be sworn to in writing by the person making the allegation. A registrant against whom a complaint was made must be immediately informed of such complaint by the board.

~~((All procedures related to hearings on such charges shall be in accordance with provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.~~

~~— If, after such hearing, a majority of the board vote in favor of finding the violations had occurred, the board shall revoke or suspend the certificate of registration of such registered professional engineer or land surveyor.))~~

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

~~((Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper.~~

~~— Fines imposed by the board shall not exceed one thousand dollars for each offense.))~~

In addition to the imposition of ~~((civil penalties under this section))~~ disciplinary action under section 112 of this act, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120.

**Sec. 227.** RCW 18.43.130 and 1997 c 247 s 4 are each amended to read as follows:

This chapter shall not be construed to prevent or affect:

- (1) The practice of any other legally recognized profession or trade; or
- (2) The practice of a person not a resident and having no established place of business in this state, practicing or offering to practice herein the profession of



engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year: PROVIDED, Such person has been determined by the board to be legally qualified by registration to practice the said profession in his or her own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter. The person shall request such a determination by completing an application prescribed by the board and accompanied by a fee determined by the director. Upon approval of the application, the board shall issue a permit authorizing temporary practice; or

(3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he or she shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: PROVIDED, That such person is legally qualified by registration to practice engineering or land surveying in his or her own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower than those specified in this chapter. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: PROVIDED, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly or in part, of the rendering of engineering services to the general public: PROVIDED, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for the government of the United States; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering or land surveying, or both, in this state by a corporation or joint stock association: PROVIDED, That

(a) The corporation has filed with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether such corporation is qualified in

accordance with this chapter to practice engineering or land surveying, or both, in this state;

(b) For engineering, the corporation has filed with the board a certified copy of a resolution of the board of directors of the corporation that shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by the corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in the resolution. For land surveying, the corporation has filed with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of land surveying by the corporation in this state and shall provide full authority to make all final land surveying decisions on behalf of the corporation with respect to work performed by the corporation in this state be granted and delegated by the board of directors to the person so designated in the resolution. If a corporation offers both engineering and land surveying services, the board of directors shall designate both a licensed engineer and a licensed land surveyor. If a person is licensed in both engineering and land surveying, the person may be designated for both professions. The resolution shall further state that the bylaws of the corporation shall be amended to include the following provision: "The designated engineer or land surveyor, respectively, named in the resolution as being in responsible charge, or an engineer or land surveyor under the designated engineer or land surveyor's direct supervision, shall make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington." However, the filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) If there is a change in the designated engineer or designated land surveyor, the corporation shall notify the board in writing within thirty days after the effective date of the change. If the corporation changes its name, the corporation shall submit a copy of its amended certificate of authority or amended certificate of incorporation as filed with the secretary of state within thirty days of the filing;

(d) Upon the filing with the board the application for certificate for authorization, certified copy of resolution and an affidavit, the designation of a designated engineer or designated land surveyor, or both, specified in (b) of this subsection, a certificate of incorporation or certificate of authorization as filed with the secretary of state, and a copy of the corporation's current Washington business license, the board shall issue to the corporation a certificate of authorization to practice engineering or land surveying, or both, in this state upon a determination by the board that:

(i) The designated engineer or designated land surveyor, or both, hold a certificate of registration in this state in accordance with this chapter and the certificate is in force;

(ii) The designated engineer or designated land surveyor, or both, are not designated in responsible charge for another corporation or a limited liability company; and

(iii) The corporation is licensed with the secretary of state and holds a current unified business identification number and the board determines, based on evaluating the findings and information in this section, that the applicant corporation possesses the ability and competence to furnish engineering or land surveying services, or both, in the public interest.

The board may exercise its discretion to (~~refuse to issue or it may suspend or revoke~~) take any of the actions under section 112 of this act with respect to a certificate of authorization issued to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has (~~committed misconduct or malpractice~~) engaged in unprofessional conduct as defined in RCW 18.43.105 or section 114 of this act or has been found personally responsible for (~~misconduct or malpractice~~) unprofessional conduct under (f) and (g) of this subsection.

(e) Engineers or land surveyors organized as a professional service corporation under chapter 18.100 RCW are exempt from applying for a certificate of authorization under this chapter.

(f) Any corporation authorized to practice engineering under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered engineer, and must conduct its business without (~~misconduct or malpractice~~) unprofessional conduct in the practice of engineering as defined in this chapter and section 114 of this act.

(g) Any corporation that is certified under this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, (~~and~~) 18.43.120, and chapter 18.--- RCW (sections 101 through 124 of this act).

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direct supervision of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under this subsection (8) there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

(9) The practice of engineering and/or land surveying in this state by a partnership if the partnership employs at least one person holding a valid certificate of registration under this chapter to practice engineering or land surveying, or both. The board shall not issue certificates of authorization to partnerships after July 1, 1998. Partnerships currently registered with the board are not required to pay an annual renewal fee after July 1, 1998.

(10) The practice of engineering or land surveying, or both, in this state by limited liability companies: Provided, That

(a) The limited liability company has filed with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the limited liability company is qualified under this chapter to practice either or both engineering or land surveying in this state.

(b) The limited liability company has filed with the board a certified copy of a resolution by the company manager or managers that shall designate a person holding a certificate of registration under this chapter as being responsible for the practice of engineering or land surveying, or both, by the limited liability company in this state and that the designated person has full authority to make all final engineering or land surveying decisions on behalf of the limited liability company with respect to work performed by the limited liability company in this state. The resolution shall further state that the limited liability company agreement shall be amended to include the following provision: "The designated engineer or land surveyor, respectively, named in the resolution as being in responsible charge, or an engineer or land surveyor under the designated engineer or land surveyor's direct supervision, shall make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington." However, the filing of the resolution shall not relieve the limited liability company of responsibility or liability imposed upon it by law or by contract.

(c) The designated engineer for the limited liability company must hold a current professional engineer license issued by this state.

The designated land surveyor for the limited liability company must hold a current professional land surveyor license issued by this state.

If a person is licensed as both a professional engineer and as a professional land surveyor in this state, then the limited liability company may designate the person as being in responsible charge for both professions.

If there is a change in the designated engineer or designated land surveyor, the limited liability company shall notify the board in writing within thirty days after the effective date of the change. If the limited liability company changes its name, the company shall submit to the board a copy of the certificate of amendment filed with the secretary of state's office.

(d) Upon the filing with the board the application for certificate of authorization, a certified copy of the resolution, an affidavit from the designated engineer or the designated land surveyor, or both, specified in (b) and (c) of this subsection, a copy of the certificate of formation as filed with the secretary of state, and a copy of the company's current business license, the board shall issue to the limited liability company a certificate of authorization to practice engineering or land surveying, or both, in this state upon determination by the board that:

(i) The designated engineer or designated land surveyor, or both, hold a certificate of registration in this state under this chapter and the certificate is in force;

(ii) The designated engineer or designated land surveyor, or both, are not designated in responsible charge for another limited liability company or a corporation;

(iii) The limited liability company is licensed with the secretary of state and has a current unified business identification number and that the board determines, based on evaluating the findings and information under this subsection, that the applicant limited liability company possesses the ability and competence to furnish either or both engineering or land surveying services in the public interest.

The board may exercise its discretion to ~~((refuse to issue, or it may suspend or revoke))~~ take any of the actions under section 112 of this act with respect to a certificate of authorization issued to a limited liability company if the board finds that any of the managers or members holding a majority interest in the limited liability company has ~~((committed misconduct or malpractice))~~ engaged in unprofessional conduct as defined in RCW 18.43.105 or section 114 of this act or has been found personally responsible for ~~((misconduct or malpractice))~~ unprofessional conduct under the provisions of (f) and (g) of this subsection.

(e) Engineers or land surveyors organized as a professional limited liability company are exempt from applying for a certificate of authorization under this chapter.

(f) Any limited liability company authorized to practice engineering or land surveying, or both, under this chapter, together with its manager or managers and members for their own individual acts, are responsible to the same degree as an individual registered engineer or registered land surveyor, and must conduct their business without ~~((misconduct or malpractice))~~ unprofessional conduct in the practice of engineering or land surveying, or both.

(g) A limited liability company that is certified under this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, ~~((and))~~ 18.43.120, and chapter 18.--- RCW (sections 101 through 124 of this act).

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a limited liability company under its certificate of authorization shall be prepared by or under the direct supervision of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under this subsection (10) there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

**NEW SECTION. Sec. 228.** A new section is added to chapter 18.43 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 229.** RCW 18.85.040 and 1992 c 92 s 1 are each amended to read as follows:

(1) The director, with the advice and approval of the commission, may issue rules and regulations to govern the activities of real estate brokers, associate real estate brokers and salespersons, consistent with this chapter and chapter 18.--- RCW (sections 101 through 124 of this act), fix the times and places for holding examinations of applicants for licenses and prescribe the method of conducting them.

(2) The director shall enforce all laws, rules, and regulations relating to the licensing of real estate brokers, associate real estate brokers, and salespersons, grant or deny licenses to real estate brokers, associate real estate brokers, and salespersons, and hold hearings. ~~((The director may impose any one or more of the following sanctions: Suspend or revoke licenses, deny applications for licenses, fine violators, or require the completion of a course in a selected aspect of real estate practice relevant to the provision of this chapter or rule violated. The director may deny, suspend or revoke the authority of a broker to act as the designated broker of persons who commit violations of the real estate license law or of the rules and regulations.))~~

(3) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(4) The director shall institute a program of real estate education including, but not limited to, instituting a program of education at institutions of higher education in Washington. The overall program shall include establishing minimum levels of ongoing education for licensees relating to the practice of real estate by real estate brokers and salespersons under this chapter. The program may also include the development or implementation of curricula courses, educational materials, or approaches to education relating to real estate when required, approved, or certified for continuing education credit. The director may enter into contracts with other persons or entities, whether publicly or privately owned or operated, to assist in developing or implementing the real estate education program.

(5) The director shall charge a fee, as prescribed by the director by rule, for the certification of courses of instruction, instructors, and schools.

**Sec. 230.** RCW 18.85.230 and 1999 c 46 s 1 are each amended to read as follows:

~~((The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of))~~ In addition to the unprofessional conduct described in section 114 of this act, the director may take disciplinary action against any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account

or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any ~~((one or more of the following sanctions: Suspend or revoke, levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license))~~ of the sanctions specified in section 112 of this act for any holder or applicant who is guilty of:

~~((1))~~ ~~((Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director,~~

~~—(2))~~ Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or RCW 18.86.030 or the rules adopted under those chapters or section;

~~((3))~~ ~~Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;~~

~~—(4))~~ (2) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

~~((5))~~ (3) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

~~((6))~~ (4) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

~~((7))~~ (5) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract, or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

~~((8))~~ (6) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession

for inspection of the director or his or her authorized representatives acting by authority of law;

~~((9))~~ (7) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

~~((10))~~ ~~Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;~~

~~((11))~~ (8) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

~~((12))~~ (9) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

~~((13))~~ (10) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

~~((14))~~ (11) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal;

~~((15))~~ (12) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

~~((16))~~ (13) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

~~((17))~~ (14) Misrepresentation of his or her membership in any state or national real estate association;

~~((18))~~ (15) Discrimination against any person in hiring or in sales activity, on the basis of any of the provisions of any state or federal antidiscrimination law;

~~((19))~~ (16) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

~~((20))~~ (17) Failing to preserve for three years following its consummation records relating to any real estate transaction;

~~((21))~~ (18) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;



~~((22))~~ (19) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

~~((23))~~ (20) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

~~((24))~~ (21) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

~~((25))~~ (22) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

~~((26))~~ (23) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency;

~~((27))~~ (24) Acting as a vehicle dealer, as defined in RCW 46.70.011, without having a license to do so; or

~~((28))~~ (25) Failing to ~~((assure))~~ ensure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson(~~;~~ or

~~(29) Violation of an order to cease and desist which is issued by the director under this chapter).~~

**Sec. 231.** RCW 18.85.261 and 1987 c 332 s 12 are each amended to read as follows:

~~((If the licensed person or applicant accused does not appear at the time and place appointed for the hearing in person or by counsel, the hearing officer may proceed and determine the facts of the accusation in his or her absence. The proceedings may be conducted at places within the state convenient to all persons concerned as determined by the director, and may be adjourned from day to day or for longer periods.))~~ The hearing officer shall cause a transcript of all such proceedings to be kept by a reporter and shall upon request after completion thereof, furnish a copy of such transcript to the licensed person or applicant accused in such proceedings at the expense of the licensee or applicant. The hearing officer shall certify the transcript of proceedings to be true and correct. If the director finds that the statement or accusation is not proved by a fair preponderance of evidence, the director shall notify the licensee or applicant and the person making the accusation and shall dismiss the case.

**Sec. 232.** RCW 18.85.271 and 1989 c 175 s 66 are each amended to read as follows:

If the director ~~((shall))~~ decides, after such hearing, that the evidence supports the accusation by a preponderance of evidence, the director may impose sanctions authorized under RCW 18.85.040. In such event the director shall enter an order

to that effect and shall file the same in his or her office and immediately mail a copy (~~((thereof))~~) to the affected party at the address of record with the department. ~~((Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in an adjudicative proceeding, whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.))~~ Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision.

NEW SECTION. **Sec. 233.** A new section is added to chapter 18.85 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 234.** RCW 18.96.060 and 1969 ex.s. c 158 s 6 are each amended to read as follows:

The board shall adopt rules for its own organization and procedure and such other rules as it may deem necessary to the proper performance of its duties. Three members of the board shall constitute a quorum for the conduct of any business of the board.

The board may conduct hearings concerning alleged violations of the provisions of this chapter. ~~((In conducting such hearings the chairman of the board, or any member of the board acting in his place, may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or to produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable.))~~

**Sec. 235.** RCW 18.96.120 and 1997 c 58 s 827 are each amended to read as follows:

(1) ~~((The director may refuse to renew, or may suspend or revoke, a certificate of registration to use the titles landscape architect, landscape architecture, or landscape architectural in this state upon the following grounds))~~ In addition to the conduct, acts, or conditions set out in section 114 of this act, the following

constitute unprofessional conduct for which the director may impose discipline upon any license holder or applicant under the jurisdiction of this chapter.

(a) The holder of the certificate of registration is impersonating a practitioner or former practitioner.

(b) ~~((The holder of the certificate of registration is guilty of fraud, deceit, gross negligence, gross incompetency or gross misconduct in the practice of landscape architecture:~~

~~—(c))~~ The holder of the certificate of registration permits his or her seal to be affixed to any plans, specifications, or drawings that were not prepared by him or her or under his or her personal supervision by employees subject to his or her direction and control.

~~((d) The holder of the certificate has committed fraud in applying for or obtaining a certificate:))~~

(2) The director shall immediately suspend the certificate of registration of a landscape architect 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 certification during the suspension, reissuance of the certificate of registration shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

**Sec. 236.** RCW 18.96.140 and 1985 c 7 s 77 are each amended to read as follows:

~~((Upon the recommendations of the board, the director may restore a license to any person whose license has been suspended or revoked. Application for the reissuance of a license shall be made in such a manner as indicated by the board:))~~

A new certificate of registration to replace any certificate lost or destroyed, or mutilated may be issued by the director, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

**NEW SECTION. Sec. 237.** A new section is added to chapter 18.96 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 238.** RCW 18.140.030 and 2000 c 249 s 2 are each amended to read as follows:

The director shall have the following powers and duties:

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter and chapter 18.--- RCW (sections 101 through 124 of this act), with the advice and approval of the commission;

(2) To receive and approve or deny applications for certification or licensure as a state-certified or state-licensed real estate appraiser under this chapter; to establish appropriate administrative procedures for the processing of such

applications; to issue certificates or licenses to qualified applicants pursuant to the provisions of this chapter; and to maintain a register of the names and addresses of individuals who are currently certified or licensed under this chapter;

(3) To provide administrative assistance to the members of and to keep records for the real estate appraiser commission;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification or licensure examinations;

(5) To administer or contract for administration of certification or licensure examinations at locations and times as may be required to carry out the responsibilities under this chapter;

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

(7) To consider recommendations by the real estate appraiser commission relating to the experience, education, and examination requirements for each classification of state-certified appraiser and for licensure;

(8) To consider recommendations by the real estate appraiser commission relating to continuing education requirements as a prerequisite to renewal of certification or licensure;

(9) To consider recommendations by the real estate appraiser commission relating to standards of professional appraisal conduct or practice in the enforcement of this chapter;

~~(10) ((To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;~~

~~—(11) To establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the provisions of this chapter;~~

~~—(12) To compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths, and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the director or the director's authorized representatives acting by authority of law;~~

~~—(13) To take emergency action ordering summary suspension of a license or certification pending proceedings by the director;~~

~~—(14)) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;~~

~~((15))~~ (11) To establish forms necessary to administer this chapter;

~~((16))~~ (12) To establish an expert review appraiser roster comprised of state-certified or licensed real estate appraisers whose purpose is to assist the director by applying their individual expertise by reviewing real estate appraisals for compliance with this chapter. Qualifications to act as an expert review appraiser shall be established by the director with the advice of the commission. An application to serve as an expert review appraiser shall be submitted to the real estate appraiser program, and the roster of accepted expert review appraisers shall

be maintained by the department. An expert review appraiser may be added to or deleted from that roster by the director. The expert review appraiser shall be reimbursed for expenses in the same manner as the department reimburses the commission; and

~~((17))~~ (13) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification or licensure of appraisers that the director determines are appropriate for state-certified and state-licensed appraisers in this state.

**Sec. 239.** RCW 18.140.160 and 2000 c 35 s 1 are each amended to read as follows:

~~(The director may deny an application for licensure or certification and may impose any one or more of the following sanctions against a state-licensed or state-certified appraiser. Suspend, revoke, or levy a fine not to exceed one thousand dollars for each offense and/or otherwise discipline in accordance with the provisions of this chapter, for any of the following acts or omissions))~~ In addition to the unprofessional conduct described in section 114 of this act, the director may take disciplinary action for the following conduct, acts, or conditions:

(1) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this chapter;

~~(2) (Procuring or attempting to procure state licensure or certification under this chapter by knowingly making a false statement, knowingly submitting false information, or knowingly making a material misrepresentation on any application filed with the director;~~

~~—(3))~~ Paying money other than the fees provided for by this chapter to any employee of the director or the ~~((committee))~~ commission to procure state licensure or certification under this chapter;

~~(((4) Obtaining a license or certification through the mistake or inadvertence of the director;~~

~~—(5) Conviction of any gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license or certificate holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;~~

~~—(6) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;~~

~~—(7) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;~~

~~—(8)) (3) Continuing to act as a state-licensed or state-certified real estate appraiser when his or her license or certificate is on an expired status;~~

~~((9) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of the director or the director's authorized representatives acting by authority of law;~~

~~—(10)) (4) Violating any provision of this chapter or any lawful rule made by the director pursuant thereto;~~

~~((11) Advertising in a false, fraudulent, or misleading manner;~~

~~—(12) Suspension, revocation, or restriction of the individual's license or certification to practice the profession by competent authority in any state, federal, or foreign jurisdiction, with a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;~~

~~—(13) Failing to comply with an order issued by the director;~~

~~—(14) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, with a certified copy of the final holding of any court of competent jurisdiction in such matter being conclusive evidence in any hearing under this chapter; and~~

~~—(15)) (5) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report; and~~

(6) Being affiliated as an employee or independent contractor with a state-licensed or state-certified real estate appraiser when the appraiser's license or certificate has been revoked due to disciplinary action.

**Sec. 240.** RCW 18.140.170 and 1996 c 182 s 10 are each amended to read as follows:

The director may investigate the actions of a state-licensed or state-certified real estate appraiser or an applicant for licensure or certification or relicensure or recertification. Upon receipt of information indicating that a state-licensed or state-certified real estate appraiser under this chapter may have violated this chapter, the director ~~((shall))~~ may cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical assistance is required, a staff investigator may consult with one or more of the members of the ~~((committee))~~ commission.

~~((In any investigation made by the director's investigative staff, the director shall have the power to compel the attendance of witnesses and the production of books, documents, records, and other papers, to administer oaths, and to take~~

~~testimony and receive evidence concerning all matters within the director's jurisdiction:~~

~~— If the director determines, upon investigation, that a state-licensed or state-certified real estate appraiser under this chapter has violated this chapter, a statement of charges shall be prepared and served upon the state-licensed or state-certified real estate appraiser. The statement of charges shall be served as follows: The statement of charges shall be sent by certified or registered mail, and if no receipt of service is received, two attempts to personally serve the statement of charges shall be made. This statement of charges shall require the accused party to file an answer to the statement of charges within twenty days of the date of service.~~

~~— In responding to a statement of charges, the accused party may admit to the allegations, deny the allegations, or otherwise plead. Failure to make a timely response shall be deemed an admission of the allegations contained in the statement of charges and will result in a default whereupon the director may enter an order under RCW 34.05.440. If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the accused. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of hearing:))~~

**NEW SECTION. Sec. 241.** A new section is added to chapter 18.140 RCW to read as follows:

The real estate appraiser commission account is created in the state treasury. All fees received by the department for licenses, registrations, renewals, examinations, and audits must be forwarded to the state treasurer who must credit the money to the account. All fines and civil penalties ordered pursuant to RCW 18.140.020, 18.140.160, or section 112 of this act against holders of licenses, certificates, or registrations issued under the provisions of this chapter must be paid to the account. All expenses incurred in carrying out the licensing and registration activities of the department under this chapter must be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. All earnings of investments of balances in the account shall be credited to the general fund. Any fund balance remaining in the general fund attributable to the real estate appraiser commission account as of July 1, 2003, must be transferred to the real estate appraiser commission account.

**NEW SECTION. Sec. 242.** A new section is added to chapter 18.140 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 243.** RCW 18.145.050 and 1995 c 269 s 502 and 1995 c 27 s 6 are each reenacted and amended to read as follows:

In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter;

(2) Set all renewal, late renewal, duplicate, and verification fees in accordance with RCW 43.24.086;

(3) Establish the forms and procedures necessary to administer this chapter;

(4) Issue a certificate to any applicant who has met the requirements for certification;

(5) Hire clerical(;) and administrative(~~(, and investigative)~~) staff as needed to implement and administer this chapter;

~~(6) ((Investigate complaints or reports of unprofessional conduct as defined in this chapter and hold hearings under chapter 34.05 RCW;~~

~~—(7) Issue subpoenas for records and attendance of witnesses, statements of charges, statements of intent to deny certificates, and orders; administer oaths; take or cause depositions to be taken; and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;~~

~~—(8)) Maintain the official departmental record of all applicants and certificate holders;~~

~~((9) Delegate, in writing to a designee, the authority to issue subpoenas, statements of charges, and statements of intent to deny certification;~~

~~—(10)) (7) Approve the preparation and administration of examinations for certification;~~

~~((11)) (8) Establish by rule the procedures for an appeal of a failure of an examination;~~

~~((12) Conduct a hearing under chapter 34.05 RCW on an appeal of a denial of a certificate based on the applicant's failure to meet minimum qualifications for certification;~~

~~—(13)) (9) Set the criteria for meeting the standard required for certification;~~

~~((14)) (10) Establish advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, disciplinary activities, or any other matters deemed necessary;~~

~~((15)) (11) Establish ad hoc advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, ((disciplinary activities,)) or any other matters deemed necessary.~~

**NEW SECTION. Sec. 244.** A new section is added to chapter 18.145 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.



Sec. 245. RCW 18.165.160 and 1997 c 58 s 835 are each amended to read as follows:

In addition to the unprofessional conduct described in section 114 of this act, the director may take disciplinary action for the following conduct, acts ((are prohibited and constitute grounds for disciplinary action, assessing administrative penalties, or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director)), or conditions:

(1) ~~((Knowingly))~~ Violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) ~~((Knowingly))~~ Making a material misstatement or omission in the application for or renewal of a ~~((license or))~~ firearms certificate, including falsifying requested identification information;

(3) Not meeting the qualifications set forth in RCW 18.165.030, 18.165.040, or 18.165.050;

(4) Failing to return immediately on demand a firearm issued by an employer;

(5) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private investigator license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;

(6) Failing to return immediately on demand company identification, badges, or other items issued to the private investigator by an employer;

(7) Making any statement that would reasonably cause another person to believe that the private investigator is a sworn peace officer;

(8) Divulging confidential information obtained in the course of any investigation to which he or she was assigned;

(9) Acceptance of employment that is adverse to a client or former client and relates to a matter about which a licensee has obtained confidential information by reason of or in the course of the licensee's employment by the client;

(10) ~~((Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;~~

~~—(11) Advertising that is false, fraudulent, or misleading;~~

~~—(12) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;~~

~~—(13) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign~~

jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

— ~~(14) Failure to cooperate with the director by:~~

— ~~(a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;~~

— ~~(b) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or~~

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

— ~~(15) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;~~

— ~~(16) Aiding or abetting an unlicensed person to practice if a license is required;~~

— ~~(17) Misrepresentation or fraud in any aspect of the conduct of the business or profession;~~

— ~~(18) Failure to adequately supervise employees to the extent that the public health or safety is at risk;~~

— ~~(19) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;~~

— ~~(20)) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.165.050;~~

~~((21)) (11) Assisting a client to locate, trace, or contact a person when the investigator knows that the client is prohibited by any court order from harassing or contacting the person whom the investigator is being asked to locate, trace, or contact, as it pertains to domestic violence, stalking, or minor children;~~

~~((22)) (12) Failure to maintain bond or insurance;~~

~~((23)) (13) Failure to have a qualifying principal in place; or~~

~~((24)) (14) Being certified as not in compliance with a support order ~~((or a residential or visitation order))~~ as provided in RCW 74.20A.320.~~

**Sec. 246.** RCW 18.165.170 and 1995 c 277 s 35 are each amended to read as follows:

The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

~~(2) ((To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;~~

~~(3) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;~~

- ~~— (4) To compel attendance of witnesses at hearings;~~  
~~— (5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;~~  
~~— (6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;~~  
~~— (7) To use the office of administrative hearings as authorized in chapter 34-12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;~~  
~~— (8)) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;~~  
~~((9)) (3) To adopt standards of professional conduct or practice;~~  
~~((10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;~~  
~~— (11)) (4) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action; and~~  
~~((12) To designate individuals authorized to sign subpoenas and statements of charges;~~  
~~— (13)) (5) To employ such ((investigative,)) administrative((;)) and clerical staff as necessary for the enforcement of this chapter(;~~  
~~— (14) To compel attendance of witnesses at hearings; and~~  
~~— (15) To assess administrative penalties for violations of law, rules, or regulations)).~~

**NEW SECTION. Sec. 247.** A new section is added to chapter 18.165 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 248.** RCW 18.170.170 and 1997 c 58 s 837 are each amended to read as follows:

In addition to the ~~((provisions of RCW 18.170.164, the following acts are prohibited and constitute grounds for disciplinary action, assessing administrative penalties, or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:~~

- ~~— (1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;~~

~~—(2)) unprofessional conduct described in section 114 of this act, the following conduct, acts, or conditions constitute unprofessional conduct:~~

~~(1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;~~

~~(2) Practicing fraud, deceit, or misrepresentation in any of the private security activities covered by this chapter;~~

~~(3) Knowingly making a material misstatement or omission in the application for a ((license or)) firearms certificate;~~

~~(4) Not meeting the qualifications set forth in RCW 18.170.030, 18.170.040, or 18.170.060;~~

~~(5) Failing to return immediately on demand a firearm issued by an employer;~~

~~(6) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private security guard license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;~~

~~(7) Failing to return immediately on demand any uniform, badge, or other item of equipment issued to the private security guard by an employer;~~

~~(8) Making any statement that would reasonably cause another person to believe that the private security guard is a sworn peace officer;~~

~~(9) Divulging confidential information that may compromise the security of any premises, or valuables shipment, or any activity of a client to which he or she was assigned;~~

~~(10) ((Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;~~

~~—(11) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;~~

~~—(12) Advertising that is false, fraudulent, or misleading;~~

~~—(13) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;~~

~~—(14) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;~~

~~—(15) Failure to cooperate with the director by:~~

- ~~— (a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;~~
- ~~— (b) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or~~
- ~~— (c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;~~
- ~~— (16) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the disciplining authority;~~
- ~~— (17) Aiding or abetting an unlicensed person to practice if a license is required;~~
- ~~— (18) Misrepresentation or fraud in any aspect of the conduct of the business or profession;~~
- ~~— (19) Failure to adequately supervise employees to the extent that the public health or safety is at risk;~~
- ~~— (20) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against a client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;~~
- ~~— (21)) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.170.060;~~
  - ~~((22)) (11) Failure to maintain insurance; and~~
  - ~~((23)) (12) Failure to have a qualifying principal in place.~~

**Sec. 249.** RCW 18.170.180 and 1991 c 334 s 18 are each amended to read as follows:

The director has the following authority in administering this chapter:

- (1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;
- (2) ~~((To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;~~
- ~~— (3) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;~~
- ~~— (4) To compel attendance of witnesses at hearings;~~
- ~~— (5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;~~
- ~~— (6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;~~
- ~~— (7) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;~~

~~— (8) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;~~

~~— (9)) To adopt standards of professional conduct or practice;~~

~~((10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;~~

~~— (11)) (3) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action; and~~

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

~~— (13)) (4) To employ such ((investigative,)) administrative((;)) and clerical staff as necessary for the enforcement of this chapter((; and~~

~~— (14) To compel the attendance of witnesses at hearings)).~~

NEW SECTION. Sec. 250. A new section is added to chapter 18.170 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 251.** RCW 18.185.110 and 1993 c 260 s 12 are each amended to read as follows:

~~((The following acts are prohibited and constitute grounds for disciplinary action or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:~~

~~— (1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;~~

~~— (2) Knowingly making a material misstatement or omission in the application for or renewal of a license;~~

~~— (3)) In addition to the unprofessional conduct described in section 114 of this act, the following conduct, acts, or conditions constitute unprofessional conduct:~~

~~(1) Violating any of the provisions of this chapter or the rules adopted under this chapter;~~

~~(2) Failing to meet the qualifications set forth in RCW 18.185.020 and 18.185.030;~~

~~((4) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing~~

~~disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;~~

~~—(5) Advertising that is false, fraudulent, or misleading;~~

~~—(6) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;~~

~~—(7) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;~~

~~—(8) Failure to cooperate with the director by not:~~

~~—(a) Furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;~~

~~—(b) Furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or~~

~~—(c) Responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;~~

~~—(9) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;~~

~~—(10) Aiding or abetting an unlicensed person to practice if a license is required;~~

~~—(11)) (3) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation, or conduct of the licensee;~~

~~((12) Failure to adequately supervise employees to the extent that the client funds are at risk;~~

~~—(13) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;~~

~~—(14)) (4) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.185.030;~~

~~((15)) (5) Conversion of any money or contract, deed, note, mortgage, or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return~~

any money or contract, deed, note, mortgage, or other evidence of title within thirty days after the owner is entitled to possession, and makes demand for possession, shall be prima facie evidence of conversion;

~~((16))~~ (6) Failing to keep records, maintain a trust account, or return collateral or security, as required by RCW 18.185.100;

~~((17))~~ (7) Any conduct in a bail bond transaction which demonstrates bad faith, dishonesty, or untrustworthiness; or

~~((18))~~ (8) Violation of an order to cease and desist that is issued by the director under this chapter.

**Sec. 252.** RCW 18.185.120 and 1993 c 260 s 13 are each amended to read as follows:

In addition to those powers set forth in section 104 of this act, the director has the ~~((following))~~ authority ~~((in administering this chapter))~~:

(1) ~~((To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;~~

~~— (2) To issue an order providing for one or any combination of the following upon violation or violations of this chapter: Denying, suspending, or revoking a license; assessing monetary penalties; restricting or limiting practice; complying with conditions of probation for a designated period of time; making restitution to the person harmed by the licensee; or other corrective action;~~

~~— (3) To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;~~

~~— (4) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;~~

~~— (5) To compel attendance of witnesses at hearings;~~

~~— (6) To establish fees by rule under RCW 43.24.086 and chapter 34.05 RCW;~~

~~— (7) To take emergency action ordering summary suspension of a license; or restriction or limitation of the licensee's practice pending proceedings by the director;~~

~~— (8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;~~

~~— (9) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;~~

~~— (10) To adopt standards of professional conduct or practice;~~

~~— (11) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against an applicant or license holder as provided by this chapter;~~

~~— (12)) To order restitution to the person harmed by the licensee; or~~

(2) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The



applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action(;

~~— (13) To designate individuals authorized to sign subpoenas and statements of charges; and~~

~~— (14) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter)).~~

**Sec. 253.** RCW 18.185.140 and 1993 c 260 s 15 are each amended to read as follows:

~~((1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and)) When a statement of charges is issued against a license holder or applicant under section 106 of this act, notice of this action must be given to the owner or qualified agent of the employing bail bond agency. ~~((The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order under RCW 34.05.440.~~~~

~~— (2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing.))~~

**Sec. 254.** RCW 18.185.170 and 1993 c 260 s 18 are each amended to read as follows:

~~(1) ((The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director has the same authority as provided the director under RCW 18.185.140. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7-21-060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders.~~

~~— (2) 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 any person practicing a profession or business for which a license is required by this chapter 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 practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.~~

~~—(3))~~ After June 30, 1994, any person who performs the functions and duties of a bail bond agent in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

~~((4))~~ (2) After January 1, 1994, a person is guilty of a gross misdemeanor if he or she owns or operates a bail bond agency in this state without first obtaining a bail bond agency license.

~~((5))~~ (3) After June 30, 1994, the owner or qualified agent of a bail bond agency is guilty of a gross misdemeanor if he or she employs any person to perform the duties of a bail bond agent without the employee having in his or her possession a permanent bail bond agent license issued by the department.

~~((6) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the department.))~~

**NEW SECTION.** Sec. 255. A new section is added to chapter 18.185 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 256.** RCW 18.210.020 and 1999 c 263 s 3 are each amended to read as follows:

~~((1))~~ In addition to the unprofessional conduct described in section 114 of this act, the following conduct, acts, and conditions constitute unprofessional conduct ((for any person issued, or applying for, a practice permit or license under this chapter)):

~~((a) Any act involving moral turpitude, dishonesty, or corruption relating to the practice of on-site wastewater treatment designs or inspections, whether or not the act constitutes a crime;~~

~~—(b) Misrepresentation or concealment of a material fact in applying for, obtaining, or reinstating a practice permit or license;~~

~~—(c) Any advertising which is false, fraudulent, or misleading;~~

~~—(d) Incompetence, gross negligence, or malpractice that results in injury to an individual, damage to property, or adverse impact on the environment;~~

~~—(e) As determined by the board, failure to provide to the board in a timely manner any lawfully requested information or documentation regarding a pending application, license renewal application, or administrative proceeding;~~

~~—(f) Failure to comply with an order issued or approved by the board;~~

~~—(g) Aiding or abetting a person in engaging in practice without a required practice permit or license;~~

~~—(h) Practicing beyond the scope of practice as defined by law or rule;~~

~~—(i) Misrepresentation or fraud in any aspect of the conduct of the business or profession of designing on-site wastewater treatment systems;~~

~~—(j) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;~~

~~—(k) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the board or its authorized representative, or by the use of threats or harassment against any person who may serve as a witness in any adjudicative proceeding before the board;~~

~~—(h)) (1) Practicing with a practice permit or license issued under this chapter that is expired, suspended, or revoked;~~

~~((m)) (2) Being willfully untruthful or deceptive in any document, report, statement, testimony, or plan that pertains to the design or construction of an on-site wastewater treatment system; and~~

~~((n)) (3) Submission of a design or as-built record to a local health jurisdiction, to the department of health, or to the department of ecology, that is knowingly based upon false, incorrect, misleading, or fabricated information; and~~

~~—(o) Any act or omission that is contrary to the standard of practice for individuals authorized to practice under this chapter.~~

~~—(2) If an act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction, however, the judgment and sentence is conclusive evidence, at the ensuing disciplinary hearing, of guilt of the crime described in the complaint, indictment, or information, and of violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and in all proceedings in which the sentence has been deferred or suspended).~~

Sec. 257. RCW 18.210.030 and 1999 c 263 s 4 are each amended to read as follows:

~~((1) The board, upon finding a violation of this chapter, has the exclusive power to:~~

~~—(a) Reprimand an applicant, licensee, or practice permit holder;~~

~~—(b) Suspend, revoke, or refuse to renew a license or practice permit;~~

~~—(c) Deny an application for a practice permit or license; and~~

~~—(d) Impose any monetary penalty not exceeding one thousand dollars for each violation upon an applicant, licensee, or permit holder.~~

~~—(2) Any person may file with the board a complaint alleging violation of this chapter. All complaints alleging violation of this chapter must be in writing and sworn to by the person making the allegation.~~

~~—(3) All procedures related to hearings on any complaint alleging violations of this chapter must comply with provisions governing adjudicative proceedings as set forth in chapter 34.05 RCW, the administrative procedure act.~~

~~—(4)) The board shall immediately suspend the license or practice permit of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license or certificate shall be automatic upon the department’s receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the child support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a license under this subsection, and satisfies the requirements of RCW 34.05.422.~~

**Sec. 258.** RCW 18.210.060 and 1999 c 263 s 7 are each amended to read as follows:

(1) The board may:

(a) Adopt rules to implement this chapter including, but not limited to, evaluation of experience, examinations, and scope and standards of practice;

(b) Administer licensing examinations; and

(c) Review and approve or deny initial and renewal license applications(~~;~~

~~—(d) Conduct investigations of complaints alleging violations of this chapter;~~

~~—(e) Conduct adjudicative proceedings in accordance with the administrative procedure act, chapter 34.05 RCW;~~

~~—(f) Issue investigative subpoenas to compel the production of records, maps, and other documents, as may be related to the investigation of violations of this chapter; and~~

~~—(g) Take disciplinary action as provided for in RCW 18.43.110 and 18.43.120)).~~

(2) The board shall consider recommendations of the advisory committee made in accordance with this chapter.

**Sec. 259.** RCW 18.210.160 and 1999 c 263 s 17 are each amended to read as follows:

~~((+))~~ On or after July 1, 2003, it is a gross misdemeanor for any person, not otherwise exempt from the requirements of this chapter, to: ~~((+))~~ (1) Perform on-site wastewater treatment systems design services without a license; ~~((+))~~ (2) purport to be qualified to perform those services without having been issued a standard license under this chapter; ~~((+))~~ (3) attempt to use the license or seal of another; ~~((+))~~ (4) attempt to use a revoked or suspended license; or ~~((+))~~ (5)

attempt to use false or fraudulent credentials. In addition, action may be taken under section 116 of this act.

~~((2) The board may exercise its authority under RCW 18.43.120 in dealing with persons described in subsection (1) of this section.))~~

NEW SECTION. Sec. 260. A new section is added to chapter 18.210 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 261.** RCW 18.220.040 and 2000 c 253 s 5 are each amended to read as follows:

The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules approved by the board as deemed necessary to carry out this chapter;

(2) To adopt fees as provided in RCW 43.24.086;

(3) To administer licensing examinations approved by the board and to adopt or recognize examinations prepared by other organizations as approved by the board;

~~(4) ((To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;~~

~~— (5) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;~~

~~— (6) To compel attendance of witnesses at hearings;~~

~~— (7) In the course of investigating a complaint or report of unprofessional conduct, to direct the board to conduct practice reviews and disciplinary hearings;~~

~~— (8) To take emergency action ordering summary suspension of a license, or restrict or limit a licensee's practice pending further proceedings by the director;~~

~~— (9) To use the board or, at the request of the board, the office of administrative hearings, as authorized in chapter 34.12 RCW, to conduct hearings. However, the director or the director's designee shall make the final decision as to disposition of the charges;~~

~~— (10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;~~

~~— (11)) To adopt standards of professional conduct and practice as approved by the board; and~~

~~((12) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;~~

~~— (13)) (5) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated~~

provision. Violation of an assurance under this subsection is grounds for disciplinary action(;

~~— (14) To designate individuals authorized to sign subpoenas and statement of charges; and~~

~~— (15) To employ investigative, administrative, and clerical staff as necessary for the enforcement of this chapter).~~

**Sec. 262.** RCW 18.220.050 and 2000 c 253 s 6 are each amended to read as follows:

The board has the following authority in administering this chapter:

(1) To establish rules, including board organization and assignment of terms, and meeting frequency and timing, for adoption by the director;

(2) To establish the minimum qualifications for applicants for licensure as provided by this chapter;

(3) To approve the method of administration for examinations required by this chapter or by rule as established by the director. To approve the adoption or recognition of examinations prepared by other organizations for adoption by the director. To set the time and place of examinations with the approval of the director;

(4) To establish and review standards of professional conduct and practice for adoption by the director. Rules of professional conduct will be consistent with those outlined for engineers and land surveyors; and

(5) To designate specialties of geology to be licensed under this chapter(;

~~— (6) To conduct disciplinary hearings; and~~

~~— (7) To conduct practice reviews).~~

**Sec. 263.** RCW 18.220.130 and 2000 c 253 s 14 are each amended to read as follows:

In addition to the unprofessional conduct described in section 114 of this act, the following conduct, acts ((are prohibited and)), and conditions constitute ((grounds for disciplinary action or denial, suspension, or revocation of any license under this chapter)) unprofessional conduct:

(1) ~~((Knowingly))~~ Violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) ~~((Knowingly making a material misstatement or omission in the application for or renewal of a license;~~

~~— (3)))~~ Not meeting the qualifications for licensing set forth by this chapter;

~~((4) Incompetency, misconduct, fraud, gross negligence, or repeated incidents of negligence in or related to the practice of geology;~~

~~— (5) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the~~

crime described in the indictment or information, and of the person's violation of the statute on which it was based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

— (6) Advertising that is false, fraudulent, or misleading;

— (7) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction; a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

— (8) Aiding or abetting an unlicensed person to practice if a license is required;

— (9) Failure to adequately supervise subordinates to the extent that the public health or safety is at risk;

— (10) Failure to cooperate with the director by:

— (a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

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

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

— ((11)) (3) Failure to comply with an ((order issued by the director or an)) assurance of discontinuance entered into with the director;

((12) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;)) or

((13)) (4) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing geology.

**Sec. 264.** RCW 18.220.150 and 2000 c 253 s 16 are each amended to read as follows:

A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governments or agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the director ((shall)) may investigate to determine if there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action

related to the filing or contents of the complaint. ~~((The director, individuals acting on the director's behalf, and members of the board are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.))~~

NEW SECTION. **Sec. 265.** A new section is added to chapter 18.220 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 266.** RCW 19.16.120 and 1997 c 58 s 847 are each amended to read as follows:

In addition to other provisions of this chapter, ~~((any license issued pursuant to this chapter or any application therefor may be denied, not renewed, revoked, or suspended, or in lieu of or in addition to suspension a licensee may be assessed a civil, monetary penalty in an amount not to exceed one thousand dollars))~~ and the unprofessional conduct described in section 114 of this act, the following conduct, acts, or conditions constitute unprofessional conduct:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150, if applicable, have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190, if applicable, has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) ~~((Shall have knowingly made a false statement of a material fact in any application for a collection agency license or an out-of-state collection agency license or renewal thereof, or in any data attached thereto and two years have not elapsed since the date of such statement;~~

~~—(b) Shall have had a license to engage in the business of a collection agency or out-of-state collection agency denied, not renewed, suspended, or revoked by this state, any other state, or foreign country, for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements: PROVIDED, That the terms of this subsection shall not apply if:~~

~~—(i) Two years have elapsed since the time of any such denial, nonrenewal, or revocation; or~~

~~—(ii) The terms of any such suspension have been fulfilled;~~

~~—(c) Has been convicted in any court of any felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or~~



conspiracy to defraud and is incarcerated for that offense or five years have not elapsed since the date of such conviction;

~~((d))~~ Has had any judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: PROVIDED, That in no event shall a license be issued unless the judgment debt has been discharged;

~~((e))~~ (b) Has had his or her license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he or she has been relicensed to practice law in this state;

~~((f))~~ (c) Has had any judgment entered against ~~((him or it))~~ such a person under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency or an out-of-state collection agency;

~~((g))~~ (d) Has petitioned for bankruptcy, and two years have not elapsed since the filing of ~~((said))~~ the petition;

~~((h) Shall be)~~ (e) Is insolvent in the sense that ~~((his or its))~~ the person's liabilities exceed ~~((his or its))~~ the person's assets or in the sense that ~~((he or it))~~ the person cannot meet ~~((his or its))~~ obligations as they mature;

~~((i))~~ (f) Has failed to pay any civil, monetary penalty assessed in accordance with RCW 19.16.351 ~~((or 19.16.360))~~ within ten days after the assessment becomes final;

~~((j))~~ (g) Has ~~((knowingly))~~ failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation; or

~~((k))~~ (h) Has been found by a court of competent jurisdiction to have violated the federal fair debt collection practices act, 15 U.S.C. Sec. 1692 et seq., or the Washington state consumer protection act, chapter 19.86 RCW, and two years have not elapsed since that finding.

Except as otherwise provided in this section, any person who is engaged in the collection agency business as of January 1, 1972, shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license under this chapter.

The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or~~

~~a residential or visitation order~~). If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 267.** RCW I9.16.351 and 1977 ex.s. c 194 s 2 are each amended to read as follows:

The board, in addition to any other powers and duties granted under this chapter and section 104 of this act:

(1) May adopt, amend, and rescind ~~((such))~~ rules ~~((and regulations))~~ for its own organization and procedure and ~~((such))~~ other rules ~~((and regulations))~~ as it may deem necessary in order to perform its duties ~~((hereunder))~~ under this chapter.

~~(2) ((When an applicant or licensee has requested a hearing as provided in RCW 19.16.360 the board shall meet and after notice and hearing may deny any application for a license hereunder, and may fail to renew, suspend, or revoke any license issued hereunder, if the applicant or licensee has failed to comply with or violated any provision of this chapter or any rule or regulation issued pursuant to this chapter. In its discretion, the board may assess a civil, monetary penalty against a licensee in an amount not to exceed one thousand dollars in lieu of or in addition to suspension. It shall be the duty of the board within thirty days after the last day of hearing to notify the appellant of its decision.~~

~~—((3))~~ (3) May inquire into the needs of the collection agency business, the needs of the director, and the matter of the policy of the director in administering this chapter, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the state, the welfare of the public, and the welfare and progress of the collection agency business.

~~((4))~~ (3) Upon request of the director, confer and advise in matters relating to the administering of this chapter.

~~((5))~~ (4) May consider and make appropriate recommendations to the director in all matters referred to the board.

~~((6))~~ (5) Upon ~~((his))~~ request of the director, confer with and advise the director in the preparation of any rules ~~((and regulations))~~ to be adopted, amended, or repealed.

~~((7))~~ (6) May assist the director in the collection of such information and data as the director may deem necessary to the proper administration of this chapter.

**NEW SECTION. Sec. 268.** A new section is added to chapter 19.16 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 269.** RCW 19.31.070 and 1969 ex.s. c 228 s 7 are each amended to read as follows:

(1) The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this chapter.

~~(2) ((The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.~~

~~---~~~~(3))~~ The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

**Sec. 270.** RCW 19.31.130 and 1997 c 58 s 848 are each amended to read as follows:

(1) In accordance with the provisions of chapter 34.05 RCW ~~((as now or as hereafter amended))~~, the director may by order ~~((deny, suspend or revoke))~~ sanction the license of any employment agency under section 112 of this act, if ~~((he))~~ the director finds that the applicant or licensee(~~:~~

~~---~~~~(a) Was previously the holder of a license issued under this chapter, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;~~

~~---~~~~(b) Has been found guilty of any felony within the past five years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving wilful fraud, misrepresentation or conversion;~~

~~---~~~~(c) Has made a false statement of a material fact in his application or in any data attached thereto;~~

~~---~~~~(d))~~ has violated any provisions of this chapter, or failed to comply with any rule or regulation issued by the director pursuant to this chapter.

(2) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**NEW SECTION.** **Sec. 271.** A new section is added to chapter 19.31 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 272.** RCW 19.105.350 and 1988 c 159 s 10 are each amended to read as follows:

(1) If the purchaser will own or acquire title to specified real property or improvements to be acquired by the camping resort, the director may by order require to the extent necessary to protect the interests of the purchasers or owners of camping resort contracts, that an appropriate portion of the proceeds paid under those camping resort contracts be placed in a separate reserve fund to be set aside and applied toward the purchase price of the real property, improvements, or facilities.

(2) The director may ~~((deny or suspend))~~ take any of the actions authorized in section 112 of this act against a registration in which the registrant is advertising or offering annual or periodic dues or assessments by members that the director finds would result in the registrant's future inability to fund operating costs.

**Sec. 273.** RCW 19.105.380 and 1997 c 58 s 850 are each amended to read as follows:

(1) ~~((A registration or an application for registration of camping resort contracts or renewals thereof may by order be denied, suspended, or revoked if the director finds that))~~ In addition to the unprofessional conduct in section 114 of this act, the director may take disciplinary action for the following conduct, acts, or conditions:

(a) ~~((The advertising, sales techniques, or trade practices of the applicant, registrant, or its affiliate or agent have been or are deceptive, false, or misleading; —(b)))~~ The applicant ~~((or)),~~ registrant, or affiliate has failed to file copies of the camping resort contract form under RCW 19.105.360;

~~((c))~~ (b) The applicant, registrant, or affiliate has failed to comply with any provision of this chapter ~~((, the rules adopted or the conditions of a permit granted under this chapter, or a stipulation or final order previously entered into by the operator or issued by the department under this chapter));~~

~~((d))~~ (c) The applicant's, registrant's, or affiliate's offering of camping resort contracts has worked or would work a fraud upon purchasers or owners of camping resort contracts;

~~((e))~~ (d) The camping resort operator or any officer, director, or affiliate of the camping resort operator has been ~~((within the last five years convicted of or pleaded nolo contendere to any misdemeanor or felony involving conversion, embezzlement, theft, fraud, or dishonesty, has been))~~ enjoined from or had any civil penalty assessed for a finding of dishonest dealing or fraud in a civil suit, or been found to have engaged in any violation of any act designed to protect consumers, or has been engaged in dishonest practices in any industry involving sales to consumers;

~~((f))~~ (e) The applicant or registrant has represented or is representing to purchasers in connection with the offer or sale of a camping resort contract that a camping resort property, facility, amenity camp site, or other development is

planned, promised, or required, and the applicant or registrant has not provided the director with a security or assurance of performance as required by this chapter;

~~((g))~~ (f) The applicant or registrant has not provided or is no longer providing the director with the necessary security arrangements to ~~((assure))~~ ensure future availability of titles or properties as required by this chapter or agreed to in the permit to market;

~~((h))~~ (g) The applicant or registrant is or has been employing unregistered salespersons or offering or proposing a membership referral program not in compliance with this chapter;

~~((i))~~ (h) The applicant or registrant has breached any escrow, impound, reserve account, or trust arrangement or the conditions of an order or permit to market required by this chapter;

~~((j))~~ ~~The applicant or registrant has breached any stipulation or order entered into in settlement of the department's filing of a previous administrative action;~~

~~((k))~~ (i) The applicant or registrant has filed or caused to be filed with the director any document or affidavit, or made any statement during the course of a registration or exemption procedure with the director, that is materially untrue or misleading;

~~((l))~~ (j) The applicant or registrant has engaged in a practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

~~((m))~~ (k) The applicant, registrant, or any of its officers, directors, or employees, if the operator is other than a natural person, have willfully done, or permitted any of their salespersons or agents to do, any of the following:

(i) Engage in a pattern or practice of making untrue or misleading statements of a material fact, or omitting to state a material fact;

(ii) Employ any device, scheme, or artifice to defraud purchasers or members;

(iii) Engage in a pattern or practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

~~((n))~~ (l) The applicant or registrant has failed to provide a bond, letter of credit, or other arrangement to ~~((assure))~~ ensure delivery of promised gifts, prizes, awards, or other items of consideration, as required under this chapter, breached such a security arrangement, or failed to maintain such a security arrangement in effect because of a resignation or loss of a trustee, impound, or escrow agent;

~~((o))~~ (m) The applicant or registrant has engaged in a practice of selling contracts using material amendments or codicils that have not been filed or are the consequences of breaches or alterations in previously filed contracts;

~~((p))~~ (n) The applicant or registrant has engaged in a practice of selling or proposing to sell contracts in a ratio of contracts to sites available in excess of that filed in the affidavit required by this chapter;

~~((q))~~ (o) The camping resort operator has withdrawn, has the right to withdraw, or is proposing to withdraw from use all or any portion of any camping resort property devoted to the camping resort program, unless:

(i) Adequate provision has been made to provide within a reasonable time thereafter a substitute property in the same general area that is at least as desirable for the purpose of camping and outdoor recreation;

(ii) The property is withdrawn because, despite good faith efforts by the camping resort operator, a nonaffiliate of the camping resort has exercised a right of withdrawal from use by the camping resort (such as withdrawal following expiration of a lease of the property to the camping resort) and the terms of the withdrawal right have been disclosed in writing to all purchasers at or prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iii) The specific date upon which the withdrawal becomes effective has been disclosed in writing to all purchasers and members prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iv) The rights of members and owners of the camping resort contracts under the express terms of the camping resort contract have expired, or have been specifically limited, upon the lapse of a stated or determinable period of time, and the director by order has found that the withdrawal is not otherwise inconsistent with the protection of purchasers or the desire of the majority of the owners of camping resort contracts, as expressed in their previously obtained vote of approval;

~~((r))~~ (p) The format, form, or content of the written disclosures provided therein is not complete, full, or materially accurate, or statements made therein are materially false, misleading, or deceptive;

~~((s))~~ ~~The applicant or registrant has failed or declined to respond to any subpoena lawfully issued and served by the department under this chapter;~~

~~((t))~~ (q) The applicant or registrant has failed to file an amendment for a material change in the manner or at the time required under this chapter or its implementing rules;

~~((u))~~ (r) The applicant or registrant has filed voluntarily or been placed involuntarily into a federal bankruptcy or is proposing to do so; or

~~((v))~~ (s) A camping resort operator's rights or interest in a campground has been terminated by foreclosure or the operations in a camping resort have been terminated in a manner contrary to contract provisions.

(2) ~~((Any applicant or registrant who has violated subsection (1)(a), (b), (c), (f), (h), (i), (j), (l), (m), or (n) of this section may be fined by the director in an amount not to exceed one thousand dollars for each such violation. Proceedings seeking such fines shall be held in accordance with chapter 34.05 RCW and may be filed either separately or in conjunction with other administrative proceedings to deny, suspend, or revoke registrations authorized under this chapter. Fines collected from such proceedings shall be deposited in the state general fund.~~

~~—(3))~~ An operator, registrant, or applicant against whom administrative or legal proceedings have been filed shall be responsible for and shall reimburse the state, by payment into the general fund, for all administrative and legal costs actually incurred by the department in issuing, processing, and conducting any such administrative or legal proceeding authorized under this chapter that results in a final legal or administrative determination of any type or degree in favor of the department.

~~((4) No order may be entered under this section without appropriate prior notice to the applicant or registrant of opportunity for a hearing and written findings of fact and conclusions of law, except that the director may by order summarily deny an application for registration or renewal under any of the above subsections and may summarily suspend or revoke a registration under subsection (1)(d), (f), (g), (h), (i), (k), (l), (m), and (n) of this section. No fine may be imposed by summary order.~~

~~—(5) The proceedings to deny an application or renewal, suspend or revoke a registration or permit, whether summarily or otherwise, or impose a fine shall be held in accordance with chapter 34.05 RCW.~~

~~—(6))~~ (3) The director may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violating or breaching an assurance under this subsection is grounds for suspension or revocation of registration or imposition of a fine.

~~((7))~~ (4) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 274.** RCW 19.105.440 and 1997 c 58 s 851 are each amended to read as follows:

(1) A salesperson may apply for registration by filing in a complete and readable form with the director an application form provided by the director ~~((which))~~ that includes the following:

(a) A statement whether or not the applicant ~~((within the past five years has been convicted of, pleaded nolo contendere to, or been ordered to serve probation for a period of a year or more for any misdemeanor or felony involving conversion, embezzlement, theft, fraud, or dishonesty or the applicant has been enjoined from, had any civil penalty assessed for, or))~~ has been found to have engaged in any

violation of any act designed to protect consumers and whether the applicant is qualified for licensure under section 114 of this act;

(b) A statement fully describing the applicant's employment history for the past five years and whether or not any termination of employment (~~((during the last five years))~~) was the result of any theft, fraud, or act of dishonesty;

(c) A consent to service comparable to that required of operators under this chapter; and

(d) Required filing fees.

(2) ~~((The director may by order deny, suspend, or revoke a camping resort salesperson's registration or application for registration under this chapter or the person's license or application under chapter 18.85 RCW, or impose a fine on such persons not exceeding two hundred dollars per violation, if the director finds that the order is necessary for the protection of purchasers or owners of camping resort contracts and the applicant or registrant is guilty of))~~ In addition to the unprofessional conduct specified in section 114 of this act, the director may take disciplinary action against a camping resort salesperson's registration or application for registration under this chapter or the person's license or application under chapter 18.85 RCW for any of the following conduct, acts, or conditions:

(a) ~~((Obtaining registration by means of fraud, misrepresentation, or concealment, or through the mistake or inadvertence of the director,~~

~~—(b)))~~ Violating any of the provisions of this chapter or any lawful rules adopted by the director pursuant thereto;

~~((c) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses. For the purposes of this section, "being convicted" includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;~~

~~—(d)))~~ (b) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the applicant or registrant and the applicant or registrant then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions, or promises;

~~((e)))~~ (c) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the work, representation, or conduct of the applicant or registrant;

~~((f) Failing, upon demand, to disclose to the director or the director's authorized representatives acting by authority of law any information within his or her knowledge or to produce for inspection any document, book or record in his~~



or her possession, which is material to the salesperson's registration or application for registration;

—(~~g~~)) (d) Continuing to sell camping resort contracts in a manner whereby the interests of the public are endangered, if the director has, by order in writing, stated objections thereto;

~~((h))~~ ~~Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;~~

—(~~i~~)) (e) Misrepresentation of membership in any state or national association; or

~~((j))~~ (f) Discrimination against any person in hiring or in sales activity on the basis of race, color, creed, or national origin, or violating any state or federal antidiscrimination law.

(3) ~~(No order may be entered under this section without appropriate prior notice to the applicant or registrant of opportunity for a hearing and written findings of fact and conclusions of law, except that the director may by order summarily deny an application for registration under this section.~~

—(4) ~~The proceedings to deny an application or renewal, suspend or revoke a registration or permit, whether summarily or otherwise, or impose a fine shall be held in accordance with chapter 34.05 RCW.~~

—(~~5~~)) The director, subsequent to any complaint filed against a salesperson or pursuant to an investigation to determine violations, may enter into stipulated assurances of discontinuances in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The salesperson shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for ~~((a))~~ disciplinary action ~~((a suspension of registration, or a fine not to exceed one thousand dollars))~~.

~~((6))~~ (4) The director may by rule require such further information or conditions for registration as a camping resort salesperson, including qualifying examinations and fingerprint cards prepared by authorized law enforcement agencies, as the director deems necessary to protect the interests of purchasers.

~~((7))~~ (5) Registration as a camping resort salesperson shall be effective for a period of one year unless the director specifies otherwise or the salesperson transfers employment to a different registrant. Registration as a camping resort salesperson shall be renewed annually, or at the time of transferring employment, whichever occurs first, by the filing of a form prescribed by the director for that purpose.

~~((8))~~ (6) It is unlawful for a registrant of camping resort contracts to employ or a person to act as a camping resort salesperson covered under this section unless the salesperson has in effect with the department and displays a valid registration

in a conspicuous location at each of the sales offices at which the salesperson is employed. It is the responsibility of both the operator and the salesperson to notify the department when and where a salesperson is employed, his or her responsibilities and duties, and when the salesperson's employment or reported duties are changed or terminated.

~~((9))~~ (7) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 275.** RCW 19.105.470 and 2000 c 171 s 69 are each amended to read as follows:

(1) Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, any withdrawal of a camping resort property in violation of RCW 19.105.380(1)~~((q))~~ (o), or any rule, order, or permit issued under this chapter, the director may in his or her discretion issue an order directing the person to cease and desist from continuing the act or practice. ~~((Reasonable notice of and opportunity for a hearing shall be given.))~~ The procedures in section 116 of this act apply to these cease and desist orders. However, the director may issue a temporary order pending the hearing which shall be effective immediately upon delivery to the person affected and which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing ~~((within fifteen days after receipt of notice))~~.

(2) If it appears necessary in order to protect the interests of members and purchasers, whether or not the director has issued a cease and desist order, the attorney general in the name of the state, the director, the proper prosecuting attorney, an affiliated members' common-interest association, or a group of members as a class, may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule, order, or permit under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant, for the defendant's assets, or to protect the interests or assets of a members' common-interest association or the members of a camping resort as a class. The state, the director, a members' common-interest association, or members as a class shall not be required to post a bond in such proceedings.

**NEW SECTION.** **Sec. 276.** A new section is added to chapter 19.105 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 277.** RCW 19.138.120 and 1999 c 238 s 4 are each amended to read as follows:

(1) Each seller of travel shall renew its registration on or before July 1<sup>st</sup> of every year or as otherwise determined by the director.

(2) Renewal of a registration is subject to the same provisions covering ~~((issuance, suspension, and revocation of))~~ disciplinary action as a registration originally issued.

(3) The director may refuse to renew a registration for any of the grounds set out under RCW 19.138.130 and section 114 of this act, and where the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry out the applicant's duties in accordance with law and with integrity and honesty. The director shall promptly notify the applicant in writing by certified mail of its intent to refuse to renew the registration. The registrant may~~((within twenty-one days after receipt of that notice or intent;))~~ request a hearing on the refusal as provided in section 106 of this act. The director may permit the registrant to honor commitments already made to its customers, but no new commitments may be incurred, unless the director is satisfied that all new commitments are completely bonded or secured to ~~((insure))~~ ensure that the general public is protected from loss of money paid to the registrant. ~~((It is the responsibility of the registrant to contest the decision regarding conditions imposed or registration denied through the process established by the administrative procedure act, chapter 34.05 RCW.))~~

**Sec. 278.** RCW 19.138.130 and 1999 c 238 s 5 are each amended to read as follows:

(1) ~~((The director may deny, suspend, or revoke the registration of a seller of travel if the director finds that the applicant))~~ In addition to the unprofessional conduct described in section 114 of this act, the director may take disciplinary action based on the following conduct, acts, or conditions if the applicant or registrant:

(a) Was previously the holder of a registration issued under this chapter, and the registration was revoked for cause and never reissued by the director, or the registration was suspended for cause and the terms of the suspension have not been fulfilled;

(b) ~~((Has been found guilty of a felony within the past ten years involving moral turpitude, or of a misdemeanor concerning fraud or conversion, or))~~ Suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion;

(c) ~~((Has made a false statement of a material fact in an application under this chapter or in data attached to it;~~

—(d)) Has violated this chapter or failed to comply with a rule adopted by the director under this chapter; or

((e)) (d) Has failed to display the registration as provided in this chapter((;

—(f) ~~Has published or circulated a statement with the intent to deceive, misrepresent, or mislead the public; or~~

—(g) ~~Has committed a fraud or fraudulent practice in the operation and conduct of a travel agency business, including, but not limited to, intentionally misleading advertising)).~~

(2) If the seller of travel is found in violation of this chapter or in violation of the consumer protection act, chapter 19.86 RCW, by the entry of a judgment or by settlement of a claim, the director may revoke the registration of the seller of travel, and the director may reinstate the registration at the director's discretion.

(3) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

**Sec. 279.** RCW 19.138.170 and 1999 c 238 s 7 are each amended to read as follows:

The director has the following powers and duties:

(1) To adopt, amend, and repeal rules to carry out the purposes of this chapter;

(2) ~~((To issue and renew registrations under this chapter and to deny or refuse to renew for failure to comply with this chapter;~~

—(3) ~~To suspend or revoke a registration for a violation of this chapter;~~

—(4)) To establish fees;

((5)) (3) Upon receipt of a complaint, to inspect and audit the books and records of a seller of travel. The seller of travel shall immediately make available to the director those books and records as may be requested at the seller of travel's place of business or at a location designated by the director. For that purpose, the director shall have full and free access to the office and places of business of the seller of travel during regular business hours. When ten or more complaints have been received by either the department or the attorney general on a seller of travel within a period of ninety days, the department shall inspect and audit books and records of the seller of travel; and

((6)) (4) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter.

**Sec. 280.** RCW 19.138.180 and 1994 c 237 s 15 are each amended to read as follows:

The director, in the director's discretion, may:

(1) Annually, or more frequently, make public or private investigations within or without this state as the director deems necessary to determine whether a registration should be ~~((granted, denied, revoked, or suspended))~~ subject to disciplinary action, or whether a person has violated or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms of this chapter;

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter; and

(3) Investigate complaints concerning practices by sellers of travel for which registration is required by this chapter.

**Sec. 281.** RCW 19.138.200 and 1994 c 237 s 20 are each amended to read as follows:

The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on ~~((disciplinary proceedings or other official))~~ acts performed in the course of their duties in the administration and enforcement of this chapter.

**Sec. 282.** RCW 19.138.240 and 1994 c 237 s 21 are each amended to read as follows:

~~(1) ((The director may assess against a person or organization that violates this chapter, or a rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.~~

~~—(2) The person or organization shall be afforded the opportunity for a hearing, upon request made to the director within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.~~

~~—(3)) A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation.~~

~~((4)) (2) If a person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the director may recover the amount assessed by action in the appropriate superior court. In the action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.~~

**NEW SECTION. Sec. 283.** A new section is added to chapter 19.138 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 284.** RCW 19.158.040 and 1989 c 20 s 4 are each amended to read as follows:

In addition to the unprofessional conduct described in section 114 of this act, the director of the department of licensing may take disciplinary action for any of the following conduct, acts, or conditions:

(1) It shall be unlawful for any person to engage in unfair or deceptive commercial telephone solicitation.

(2) A commercial telephone solicitor shall not place calls to any residence which will be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.

(3) A commercial telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

**Sec. 285.** RCW 19.158.050 and 1997 c 58 s 853 are each amended to read as follows:

(1) In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing. Prior to doing business in this state, a commercial telephone solicitor shall register with the department of licensing. Doing business in this state includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.

(2) The department of licensing, in registering commercial telephone solicitors, shall have the authority to require the submission of information necessary to assist in identifying and locating a commercial telephone solicitor, including past business history, prior judgments, and such other information as may be useful to purchasers.

(3) The department of licensing shall issue a registration number to the commercial telephone solicitor.

(4) ~~((It is a violation of this chapter for a commercial telephone solicitor to:))~~  
In addition to the unprofessional conduct described in section 114 of this act, the director of the department of licensing may take disciplinary action for any of the following conduct, acts, or conditions:

(a) Failing to maintain a valid registration;

(b) ~~((Advertise))~~ Advertising that one is registered as a commercial telephone solicitor or ~~((to))~~ representing that such registration constitutes approval or endorsement by any government or governmental office or agency;

(c) ~~((Provide inaccurate or incomplete information to the department of licensing when making a registration application; or~~

~~—(d))~~ Representing that a person is registered or that such person has a valid registration number when such person does not.

(5) An annual registration fee shall be assessed by the department of licensing, the amount of which shall be determined at the discretion of the director of the department of licensing, and which shall be reasonably related to the cost of administering the provisions of this chapter.

(6) 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.

NEW SECTION. Sec. 286. A new section is added to chapter 19.158 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 287.** RCW 42.44.030 and 1985 c 156 s 3 are each amended to read as follows:

In addition to the unprofessional conduct specified in section 114 of this act, the director may deny appointment as a notary public to any person ~~((who))~~ based on the following conduct, acts, or conditions:

(1) ~~((Has been convicted of a serious crime;~~  
~~—(2)))~~ Has had ~~((a notary appointment or other))~~ disciplinary action taken against any professional license ~~((revoked, suspended, or restricted))~~ in this or any other state; or

~~(((3)))~~ (2) Has engaged in official misconduct as defined in ~~((section 17(1) of this act))~~ RCW 42.44.160(1), whether or not criminal penalties resulted ~~((; or~~  
~~—(4))~~ Has performed a notarial act or acts in a manner found by the director to constitute gross negligence, a course of negligent conduct, or reckless disregard of his or her responsibility as a notary public).

The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate must bear a printed seal of the state of Washington.

**Sec. 288.** RCW 42.44.060 and 1985 c 156 s 6 are each amended to read as follows:

A person appointed as a notary public by the director may perform notarial acts in this state for a term of four years, unless:

(1) Disciplinary action has been taken against the notarial appointment ~~((has been revoked under RCW 42.44.130 or 42.44.140)), including a shorter term, suspension, or revocation;~~ or

(2) The notarial appointment has been resigned.

**Sec. 289.** RCW 42.44.160 and 1985 c 156 s 16 are each amended to read as follows:

(1) A notary public commits official misconduct when he or she signs a certificate evidencing a notarial act, knowing that the contents of the certificate are false. Official misconduct also constitutes unprofessional conduct for which disciplinary action may be taken.

(2) A notary public who commits an act of official misconduct shall be guilty of a gross misdemeanor.

(3) Any person not appointed as a notary public who acts as or otherwise impersonates a notary public shall be guilty of a gross misdemeanor.

**Sec. 290.** RCW 42.44.170 and 1985 c 156 s 17 are each amended to read as follows:

~~(1) ((The director may revoke the appointment of any notary public for any reason for which appointment may be denied under RCW 42.44.030.~~

~~—(2))~~ The director shall revoke the appointment of a notary public upon a judicial finding of incompetency of the notary public. If a notary public is found to be incompetent, his or her guardian or conservator shall within thirty days of such finding mail or deliver to the director a letter of resignation on behalf of the notary public.

~~((3))~~ (2) A notary public may voluntarily resign by mailing or delivering to the director a letter of resignation.

**Sec. 291.** RCW 42.44.190 and 1985 c 156 s 20 are each amended to read as follows:

~~((On or before January 1, 1986,))~~ The director ~~((shall))~~ may adopt rules ~~((to carry out))~~ consistent with this chapter. Such rules shall include but shall not be limited to rules concerning applications for appointment, application and renewal fees, fees chargeable for notarial services, the replacement of lost or stolen seals or stamps, changes of names or addresses of notaries, resignations of notaries, ~~((appeals of denials and revocations of appointments,))~~ and issuance of evidences of authenticity of notarial seals and signatures.

**NEW SECTION. Sec. 292.** A new section is added to chapter 42.44 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 293.** RCW 46.72.100 and 1983 c 164 s 8 are each amended to read as follows:

In addition to the unprofessional conduct specified in section 114 of this act, the director may ~~((refuse to issue a permit or certificate, or he may suspend or revoke a permit or certificate))~~ take disciplinary action if he or she has good reason to believe that one of the following is true of the operator or the applicant for a permit or certificate: (1) ~~((He has been convicted of an offense of such a nature as to indicate that he is unfit to hold a certificate or permit, (2))~~ He or she is guilty of committing two or more offenses for which mandatory revocation of driver's



license is provided by law; ~~((3))~~ (2) he or she has been convicted of vehicular homicide or vehicular assault; ~~((4))~~ (3) he or she is intemperate or addicted to the use of narcotics.

~~((Notice of the director to refuse, suspend, or revoke the permit or certificate shall be given by certified mail to the holder or applicant for the permit or certificate and shall designate a time and place for a hearing before the director, which shall not be less than ten days from the date of the notice. If the director, after the hearing, decides that a permit shall be canceled or revoked, he shall notify the holder or applicant to that effect by certified mail. The applicant or permit holder may within thirty days from the date of the decision appeal to the superior court of Thurston county for a review of the decision by filing a copy of the notice with the clerk of the superior court and a copy of the notice in the office of the director. The court shall set the matter down for hearing with the least possible delay.))~~

Any for hire operator who operates a for hire vehicle without first having filed a bond or insurance policy and having received a for hire permit and a for hire certificate as required by this chapter is guilty of a gross misdemeanor, and upon conviction shall be punished by imprisonment in jail for a period not exceeding ninety days or a fine of not exceeding five hundred dollars, or both fine and imprisonment.

NEW SECTION. Sec. 294. A new section is added to chapter 46.72 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

Sec. 295. RCW 46.72A.100 and 1996 c 87 s 13 are each amended to read as follows:

The ~~((department may suspend, revoke, or refuse to issue a license if it has good reason to believe that))~~ director may impose any of the sanctions specified in section 112 of this act for unprofessional conduct as described in section 114 of this act or if one of the following is true of a chauffeur hired to drive a limousine including where such a chauffeur is also the carrier: (1) The person has been convicted of an offense of such a nature as to indicate that he or she is unfit to qualify as a chauffeur; (2) the person is guilty of committing two or more offenses for which mandatory revocation of a driver's license is provided by law; (3) the person has been convicted of vehicular homicide or vehicular assault; (4) the person is intemperate or addicted to narcotics.

NEW SECTION. Sec. 296. A new section is added to chapter 46.72A RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 297.** RCW 64.36.040 and 1983 1st ex.s. c 22 s 5 are each amended to read as follows:

If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a complete registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines.

**Sec. 298.** RCW 64.36.090 and 1987 c 370 s 9 are each amended to read as follows:

The director may ~~((by order deny, suspend, or revoke))~~ take disciplinary action against a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the ~~((order is in the public interest and the))~~ applicant or registrant has committed unprofessional conduct as described in section 114 of this act. In addition, the director may take disciplinary action if the applicant or registrant:

(1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect ~~((or contains any statement which is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact));~~

(2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;

(3) ~~((Has been convicted within the past five years of any misdemeanor or felony involving theft, fraud, or any consumer protection statute, or any felony involving moral turpitude;~~

~~—(4))~~ (4) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any conduct or practice involving any aspect of the timeshare business;

~~((5))~~ (4) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

~~((6))~~ (5) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

~~((7))~~ (6) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter.

~~((The director may by order summarily postpone or suspend registration of the salesperson pending final determination of any proceeding under RCW 64.36.180:))~~

**Sec. 299.** RCW 64.36.100 and 1987 c 370 s 10 are each amended to read as follows:

~~((1))~~ The director may ~~((issue an order denying, suspending, or revoking))~~ deny or take disciplinary action against any timeshare application or registration if the director finds that the ~~((order is in the public interest and that))~~ applicant or registrant has engaged in unprofessional conduct as described in section 114 of this act. In addition, the director may deny or take disciplinary action based on the following conduct, acts, or conditions:

~~((a))~~ (1) The application, written disclosure, or registration is incomplete ~~((or contains any statement which is false or misleading with respect to any material fact))~~;

~~((b))~~ Any provision of this chapter, the permit to market, or any rule or order lawfully issued under this chapter has been violated by the promoter, its affiliates, or any natural person whose signature is required under this chapter;

~~((c))~~ (2) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

~~((d))~~ (3) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

~~((e))~~ (4) The protections and security arrangements to ~~((assure))~~ ensure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers~~((:))~~; or

~~((f))~~ (5) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter.

~~((2))~~ The director shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within fifteen days of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the director modifies or vacates it.)

**Sec. 300.** RCW 64.36.195 and 1987 c 370 s 7 are each amended to read as follows:

The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation or breaching of an assurance under this section shall ~~((be grounds for a suspension, revocation of registration, or imposition of a fine))~~ constitute unprofessional conduct for which disciplinary action may be taken under sections 112 and 114 of this act.

**Sec. 301.** RCW 64.36.200 and 1983 1st ex.s. c 22 s 19 are each amended to read as follows:

(1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after ((receipt)) service of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing ((within fifteen days after receipt of notice of opportunity for hearing)), the order shall become final.

(4) Unlicensed timeshare activity is subject to section 116 of this act.

**Sec. 302.** RCW 64.36.220 and 1983 1st ex.s. c 22 s 21 are each amended to read as follows:

(1) The attorney general, in the name of the state or the director, may bring an action to enjoin any person from violating any provision of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

~~(4) ((Any person who violates any provision of this chapter is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection shall be imposed in a civil action brought by the attorney general and shall be deposited in the general fund of the state treasury. Any action for recovery of a civil penalty shall be commenced within five years of the date of the alleged violation))~~ Proceedings for injunctions for unlicensed timeshare activity must be conducted under the provisions of section 116 of this act.

**Sec. 303.** RCW 64.36.230 and 1983 1st ex.s. c 22 s 22 are each amended to read as follows:

~~((1))~~ Any person who violates RCW 64.36.020 is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. Any person who knowingly violates RCW 64.36.020 or 64.36.210 is guilty of a class C felony punishable under chapter 9A.20 RCW. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

~~((2) The director may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney who may, with or without this reference, institute appropriate criminal proceedings.)~~

**NEW SECTION. Sec. 304.** A new section is added to chapter 64.36 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 305.** RCW 67.08.010 and 1997 c 205 s 2 are each amended to read as follows:

~~((1))~~ The department shall have power to issue and ~~((for cause to revoke, suspend, or deny))~~ take disciplinary action as provided in section 114 of this act against a license to conduct, hold, or promote boxing, martial arts, or wrestling events or closed circuit telecasts of these events as provided in this chapter and chapter 18.--- RCW (sections 101 through 124 of this act) under such terms and conditions and at such times and places as the department may determine.

~~((2) In case the department revokes, suspends, or denies any license or issues a fine, such applicant, or license shall be entitled, upon application, to a hearing to be held under chapter 34.05 RCW, the administrative procedure act.)~~

**Sec. 306.** RCW 67.08.015 and 2000 c 151 s 2 are each amended to read as follows:

(1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause, which includes concern for the safety and welfare of the participants, ~~((deny, revoke, or suspend))~~ take any of the actions specified in section 112 of this act against a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events promoted on a nonprofit basis or for charitable purposes; are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section.

(3) The director shall prohibit events unless all of the contestants are either licensed under this chapter or trained by an amateur or professional sanctioning body recognized by the department.

**Sec. 307.** RCW 67.08.017 and 1997 c 205 s 4 are each amended to read as follows:

In addition to the powers described in sections 104 and 105 of this act, the director or the director's designee has the following authority in administering this chapter:

(1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

~~(2) ((Issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;~~

~~— (3) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;~~

~~— (4) Compel attendance of witnesses at hearings;~~

~~— (5) In the course of investigating a complaint or report of unprofessional conduct, conduct practice reviews;~~

~~— (6) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;~~

~~— (7) Use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;~~

~~— (8) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;~~

~~— (9)) Adopt standards of professional conduct or practice;~~

~~(((10) In the event of a finding of unprofessional conduct by an applicant or license holder, impose sanctions against a license applicant or license holder as provided by this chapter;~~

~~— (11)) (3) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action; and~~

~~((12) Designate individuals authorized to sign subpoenas and statements of charges;~~

~~— (13) Employ the investigative, administrative, and clerical staff necessary for the enforcement of this chapter;~~

~~— (14) Compel the attendance of witnesses at hearings; and~~

~~— (15)) (4) Establish and assess fines for violations of this chapter that may be subject to payment from a contestant's purse.~~

**Sec. 308.** RCW 67.08.090 and 1999 c 282 s 6 are each amended to read as follows:

(1) Each contestant for boxing, kickboxing, or martial arts events shall be examined within twenty-four hours before the contest by an event physician licensed by the department. The event physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the event physician shall be permitted to participate in any event. Blank forms for event physicians' reports shall be provided by the department and all questions upon such blanks shall be answered in full. The event physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that an event physician be present at a wrestling event. The promoter shall pay the event physician present at a wrestling event. A boxing, kickboxing, or martial arts event may not be held unless an event physician licensed by the department is present throughout the event.

(3) Any physician licensed under RCW 67.08.100 may be selected by the department as the event physician. The event physician present at any contest shall have authority to stop any event when in the event physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the event physician's duty to stop the event.

(4) The department may have a participant in a wrestling event examined by an event physician licensed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the event physician shall not be permitted to participate in the event.

(5) Each contestant for boxing, kickboxing, martial arts, or wrestling events may be subject to a random urinalysis or chemical test within twenty-four hours before or after a contest. In addition to the unprofessional conduct specified in section 114 of this act, an applicant or licensee who refuses or fails to submit to the urinalysis or chemical test is subject to disciplinary action under ((RCW 67.08.240)) section 112 of this act. If the urinalysis or chemical test is positive for substances prohibited by rules adopted by the director, the applicant or licensee has engaged in unprofessional conduct and disciplinary action ((shall)) may be taken under ((RCW 67.08.240)) section 112 of this act.

**Sec. 309.** RCW 67.08.100 and 2001 c 246 s 1 are each amended to read as follows:

(1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspector; (g) judge; (h) timekeeper; (i) announcer; (j) event physician; (k) referee; (l) matchmaker; (m) kickboxer; and (n) martial arts participant.

(2) The application for the following types of licenses shall include a physical performed by a physician, as defined in RCW 67.08.002, which was performed by the physician with a time period preceding the application as specified by rule: (a) Boxer; (b) wrestling participant; (c) kickboxer; (d) martial arts participant; and (e) referee.

(3) An applicant for the following types of licenses for the sports of boxing, kickboxing, and martial arts shall provide annual proof of certification as having adequate experience, skill, and training from an organization approved by the department, including, but not limited to, the association of boxing commissions, the international boxing federation, the international boxing organization, the Washington state association of professional ring officials, the world boxing association, the world boxing council, or the world boxing organization for boxing officials, and the united full contact federation for kickboxing and martial arts officials: (a) Judge; (b) referee; (c) inspector; (d) timekeeper; or (e) other officials deemed necessary by the department.

~~((5))~~ ~~(Any license may be revoked, suspended, or denied by the director for a violation of this chapter or a rule adopted by the director.~~

~~((5))~~ No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

~~((6))~~ (5) The referees, judges, timekeepers, event physicians, and inspectors for any boxing event shall be designated by the department from among licensed officials.

~~((7))~~ (6) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

~~((8))~~ (7) 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. 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.

~~((9))~~ (8) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

~~((10))~~ (9) A person may not be issued a license unless they are at least eighteen years of age.

~~((11))~~ (10) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal



organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies.

**Sec. 310.** RCW 67.08.110 and 1999 c 282 s 8 are each amended to read as follows:

(1) Any person or any member of any group of persons or corporation promoting boxing events who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing event (~~((shall be subject to license suspension, revocation, or fine and such revoked, suspended, or fined licensee shall not be entitled to receive any license issued under this chapter))~~) has engaged in unprofessional conduct and is subject to the sanctions specified in section 112 of this act.

(2) A manager of any boxer, kickboxer, or martial arts participant who allows any person or any group of persons or corporation promoting boxing, kickboxing, or martial arts events to participate directly or indirectly in the purse or fee, or any boxer, kickboxer, or martial arts participant or other licensee who conducts or participates in any sham or fake boxing, kickboxing, or martial arts event has engaged in unprofessional conduct and is subject to (~~((disciplinary action under RCW 67.08-240))~~) the sanctions specified in section 112 of this act.

**Sec. 311.** RCW 67.08.130 and 1997 c 205 s 13 are each amended to read as follows:

Whenever any licensee shall fail to make a report of any event within the time prescribed by this chapter or when such report is unsatisfactory to the department, the director may examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any event and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, (~~((and if such licensee shall fail))~~) providing the licensee with an opportunity to request a hearing under chapter 34.05 RCW. The failure to request a hearing within twenty days of service of the notice constitutes a default, whereupon the director will enter a decision on the facts available. Failure to pay such additional tax within twenty days after service of (~~((such notice such delinquent))~~) a final order constitutes unprofessional conduct and the licensee (~~((shall))~~) may be subject to (~~((revocation of))~~) disciplinary action against its license and shall be disqualified from receiving any new license. ((In addition, such licensee shall be liable to this state in the penal sum of one thousand dollars to be collected by the attorney general by civil action in the name of the state in the manner provided by law.))

**Sec. 312.** RCW 67.08.140 and 1997 c 205 s 14 are each amended to read as follows:

Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing or wrestling events within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting the events excluded from the operation of this chapter by RCW 67.08.015. ~~((The attorney general, each prosecuting attorney, the department, or any citizen of any county where any person, club, corporation, organization, association, fraternal society, promoter, or participant shall threaten to hold, or appears likely to hold or participate in athletic events in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, fraternal society, promoter, or participant from holding or participating in the event.))~~

**Sec. 313.** RCW 67.08.180 and 1997 c 205 s 16 are each amended to read as follows:

In addition to the unprofessional conduct specified in section 114 of this act, the following conduct, acts, or conditions constitute unprofessional conduct for which disciplinary action may be taken:

(1) ~~((It is a violation of this chapter for any promoter or person associated with or employed by any promoter to destroy))~~ Destruction of any ticket or ticket stub, whether sold or unsold, within three months after the date of any event, by any promoter or person associated with or employed by any promoter.

(2) ~~((It is a violation of this chapter for a wrestling participant to deliberately cut himself or herself or otherwise mutilate himself or herself))~~ The deliberate cutting of himself or herself or other self mutilation by a wrestling participant while participating in a wrestling event.

(3) ~~((The department shall revoke the license of a licensee convicted))~~ A conviction under chapter 69.50 RCW.

(4) ~~((The director shall revoke the license of a licensee))~~ Testing positive for illegal use of a controlled substance as defined in RCW 69.50.101~~((, and shall deny the application of an applicant testing positive for a controlled substance as defined in RCW 69.50.101)).~~

(5) The striking of any person that is not a licensed participant at a wrestling event ~~((constitutes grounds for suspension, fine, revocation, or any combination thereof)).~~

**Sec. 314.** RCW 67.08.300 and 1997 c 205 s 24 are each amended to read as follows:

The director or individuals acting on the director's behalf are immune from suit in an action, civil or criminal, based on ~~((disciplinary proceedings or other))~~ official acts performed in the course of their duties in the administration and enforcement of this chapter.

NEW SECTION. **Sec. 315.** A new section is added to chapter 67.08 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 316.** RCW 68.05.105 and 1987 c 331 s 10 are each amended to read as follows:

In addition to the authority in section 104 of this act, the board has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this title; and

~~(2) ((To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings;~~

~~— (3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this title;~~

~~— (4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this title;~~

~~— (5) To compel attendance of witnesses at hearings;~~

~~— (6) In the course of investigating a complaint, to conduct practice reviews;~~

~~— (7) To take emergency action pending proceedings by the board;~~

~~— (8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the board shall make the final decision;~~

~~— (9) To use consultants or individual members of the board to assist in the direction of investigations and issuance of statements of charges. However, those board members shall not subsequently participate in the hearing of the case;~~

~~— (10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this title;~~

~~— (11) To contract with persons or organizations to provide services necessary for the monitoring and supervision of licensees, or authorities who are for any authorized purpose subject to monitoring by the board;~~

~~— (12))) To adopt standards of professional conduct or practice((;~~

~~— (13) To grant or deny authorities or license applications, and in the event of a finding of unprofessional conduct by an applicant, authority, or license holder, to impose any sanction against a license applicant, authority, or license holder provided by this title;~~

~~— (14) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant, holder of an authority to operate, or license holder shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;~~

- ~~—(15) To revoke the license or authority;~~
  - ~~—(16) To suspend the license or authority for a fixed or indefinite term;~~
  - ~~—(17) To restrict or limit the license or authority;~~
  - ~~—(18) To censure or reprimand;~~
  - ~~—(19) To cause compliance with conditions of probation for a designated period of time;~~
  - ~~—(20) To fine for each violation of this title, not to exceed one thousand dollars per violation. Funds received shall be placed in the cemetery account;~~
  - ~~—(21) To order corrective action.~~
- ~~Any of the actions under this section may be totally or partly stayed by the board. In determining what action is appropriate, the board must first consider what sanctions are necessary to protect or compensate the public. All costs associated with compliance with orders issued under this section are the obligation of the license or authority holder or applicant).~~

**Sec. 317.** RCW 68.05.170 and 1987 c 331 s 23 are each amended to read as follows:

(1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it ~~((shall))~~ may by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located and the court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection, and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) Transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) Failed to reinvest endowment care funds in accordance with a board order issued under subsection ~~((one))~~ (1) of this section; or,

(c) Invested endowment care funds in violation of this title; or,

(d) Taken action or failed to take action to preserve and protect the endowment care funds, evidencing a lack of concern therefor; or,

(e) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) Is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) Taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules(~~(, regulations)~~) and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trustees.

**Sec. 318.** RCW 68.05.235 and 1987 c 331 s 19 are each amended to read as follows:

(1) Each authorized cemetery authority shall within ninety days after the close of its accounting year file with the board upon the board's request a true and accurate statement of its financial condition, transactions, and affairs for the preceding year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The failure to file a statement as required under subsection (1) of this section constitutes unprofessional conduct for which the board (~~shall suspend or revoke~~) may take disciplinary action against the prearrangement sales license of (~~any~~) the cemetery authority (~~which fails to comply with the request~~). In addition, the board may take disciplinary action against any other license held by the cemetery authority.

**Sec. 319.** RCW 68.05.259 and 1987 c 331 s 22 are each amended to read as follows:

If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board (~~shall revoke~~) may take disciplinary action against any existing certificate of authority. Examination expenses incurred in conjunction with a transfer of ownership of a cemetery shall be paid by the selling entity. All examination expense moneys collected by the department shall be paid to the (~~department~~) program account.

**Sec. 320.** RCW 68.05.300 and 1987 c 331 s 25 are each amended to read as follows:

(~~The board may revoke, suspend, or terminate a certificate of authority or prearrangement sales license if a~~) In addition to the unprofessional conduct described in section 114 of this act, the board may take disciplinary action if the cemetery authority:

(1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state; or

~~(3) ((Refuses to be examined, or refuses to submit to examination or to produce its accounts, records, and files for examination by the board when required;~~

~~—(4)) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public((; or~~

~~—(5) Is found by the board to use false, misleading, or deceptive advertisements or sales methods)).~~

**Sec. 321.** RCW 68.05.310 and 1989 c 175 s 124 are each amended to read as follows:

~~((The board or its authorized representative shall give a cemetery authority notice of its intention to suspend, revoke, or refuse to renew a certificate of authority or a prearrangement sales license, and shall grant the cemetery authority a hearing, in the manner required for adjudicative proceedings under chapter 34.05 RCW, the Administrative Procedure Act, before the order of suspension, revocation, or refusal may become effective.))~~

No cemetery authority whose prearrangement sales license has been ~~((suspended, revoked, or refused))~~ the subject of disciplinary action shall be authorized to enter into prearrangement contracts unless specifically authorized by the board and only upon full compliance with the conditions required by the board. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund.

**Sec. 322.** RCW 68.05.320 and 1979 c 21 s 32 are each amended to read as follows:

(1) The board or its authorized representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in ~~((†))~~(a) or ~~((†))~~(b) of this subsection when the opinion is based upon reasonable cause.

(2) 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 cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and

desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to ~~((refuse to renew or to revoke or suspend))~~ take disciplinary action against a cemetery authority's prearrangement sales license.

**Sec. 323.** RCW 68.05.330 and 1987 c 331 s 27 are each amended to read as follows:

Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for ~~((revocation of))~~ disciplinary action against the certificate of authority under this chapter and chapter 18.--- RCW (sections 101 through 124 of this act) or ~~((revocation of))~~ disciplinary action against the prearrangement sales license under this chapter and chapter 18.--- RCW (sections 101 through 124 of this act). Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law.

**Sec. 324.** RCW 68.05.340 and 1987 c 331 s 28 are each amended to read as follows:

Whenever the board or its authorized representative determines that a cemetery authority is in violation of this title, other than engaging in unlicensed activity, or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial dissipation of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund or to otherwise seriously prejudice the interests of the purchasers or beneficiaries of prearrangement contracts, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350 or until the board dismisses the charges specified in the notice under RCW 68.05.320 or until the effective date of a cease and desist order issued against the cemetery authority

under RCW 68.05.320. Actions for unlicensed activity must be conducted under section 116 of this act.

**Sec. 325.** RCW 68.05.350 and 1987 c 331 s 29 are each amended to read as follows:

Within ten days after a cemetery authority has been served with a temporary cease and desist order issued under RCW 68.05.320, the cemetery authority 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 completion of the administrative proceedings under RCW 68.05.320.

**NEW SECTION. Sec. 326.** A new section is added to chapter 68.05 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 327.** RCW 79A.60.480 and 2000 c 11 s 109 are each amended to read as follows:

(1) The department of licensing (~~(staff)~~) may issue a whitewater river outfitter's license to an applicant who submits a completed application, pays the required fee, and complies with the requirements of this section.

(2) An applicant for a whitewater river outfitter's license shall make application upon a form provided by the department of licensing. The form must be submitted annually and include the following information:

(a) The name, residence address, and residence telephone number, and the business name, address, and telephone number of the applicant;

(b) Certification that all employees, subcontractors, or independent contractors hired as guides meet training standards under RCW 79A.60.430 before carrying any passengers for hire;

(c) Proof that the applicant has liability insurance for a minimum of three hundred thousand dollars per claim for occurrences by the applicant and the applicant's employees that result in bodily injury or property damage. All guides must be covered by the applicant's insurance policy;

(d) Certification that the applicant will maintain the insurance for a period of not less than one year from the date of issuance of the license; and

(e) Certification by the applicant that for a period of not less than twenty-four months immediately preceding the application the applicant:

(i) Has not had a license, permit, or certificate to carry passengers for hire on a river revoked by another state or by an agency of the government of the United States due to a conviction for a violation of safety or insurance coverage requirements no more stringent than the requirements of this chapter; and

(ii) Has not been denied the right to apply for a license, permit, or certificate to carry passengers for hire on a river by another state.

(3) The department of licensing shall charge a fee for each application, to be set in accordance with RCW 43.24.086.



(4) Any person advertising or representing himself or herself as a whitewater river outfitter who is not currently licensed is guilty of a gross misdemeanor.

(5) The department of licensing shall submit annually a list of licensed persons and companies to the department of community, trade, and economic development, tourism promotion division.

(6) If an insurance company cancels or refuses to renew insurance for a licensee, the insurance company shall notify the department of licensing in writing of the termination of coverage and its effective date not less than thirty days before the effective date of termination.

(a) Upon receipt of an insurance company termination notice, the department of licensing shall send written notice to the licensee that on the effective date of termination the department of licensing will suspend the license unless proof of insurance as required by this section is filed with the department of licensing before the effective date of the termination.

(b) If an insurance company fails to give notice of coverage termination, this failure shall not have the effect of continuing the coverage.

(c) The department of licensing may ~~((suspend a license under this section))~~ sanction a license under section 112 of this act if the licensee fails to maintain in full force and effect the insurance required by this section.

(7) The state of Washington shall be immune from any civil action arising from the issuance of a license under this section.

**Sec. 328.** RCW 79A.60.490 and 2000 c 11 s 111 are each amended to read as follows:

Within five days after conviction for any of the provisions of RCW 79A.60.430 through 79A.60.480, the court shall forward a copy of the judgment to the department of licensing. After receiving proof of conviction, the department of licensing may ~~((suspend))~~ sanction the license of any whitewater river outfitter ~~((for a period not to exceed one year or until))~~ under section 112 of this act. Proof of compliance with all licensing requirements and correction of the violation under which the whitewater river outfitter was convicted may be considered by the department as mitigating factors when taking disciplinary action.

**NEW SECTION.** **Sec. 329.** A new section is added to chapter 79A.60 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.--- RCW (sections 101 through 124 of this act), governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

## PART 3

NEW SECTION. **Sec. 401.** The following acts or parts of acts are each repealed:

(1) RCW 18.08.450 (Actions against certificate—Discipline—Board’s authority—Procedure) and 1989 c 175 s 59 & 1985 c 37 s 16;

(2) RCW 18.39.400 (Disciplinary authority of board—Rules) and 1994 c 17 s 2;

(3) RCW 18.39.430 (Statement of charge of violation—Notice—Hearing) and 1994 c 17 s 5;

(4) RCW 18.39.440 (Hearings—Procedures—Administrative Procedure Act) and 1994 c 17 s 6;

(5) RCW 18.39.460 (Actions against license—Exceptions) and 1994 c 17 s 8;

(6) RCW 18.39.470 (Order—When effective—Stay) and 1994 c 17 s 9;

(7) RCW 18.39.480 (Appeal) and 1994 c 17 s 10;

(8) RCW 18.39.490 (Reinstatement—Hearings—Examination) and 1994 c 17 s 11;

(9) RCW 18.39.500 (Finding of unprofessional conduct—Order—Sanctions—Stay—Costs) and 1994 c 17 s 12;

(10) RCW 18.39.510 (Informal disposal—Statement of allegations—Summary of evidence—Stipulation—Sanctions—Disclosure—Enforcement) and 2000 c 171 s 11 & 1994 c 17 s 13;

(11) RCW 18.39.520 (Enforcement of fine) and 1994 c 17 s 14;

(12) RCW 18.39.540 (Violation of injunction—Penalties) and 1994 c 17 s 16;

(13) RCW 18.39.550 (Crime by license, registration, endorsement, or permit holder—Notice by board) and 1994 c 17 s 17;

(14) RCW 18.43.140 (Injunctive relief, proof—Board’s immunity from liability—Prosecutions) and 1959 c 297 s 3;

(15) RCW 18.85.251 (Disciplinary action—Procedure—Investigation—Hearing) and 1988 c 205 s 7, 1987 c 332 s 11, 1981 c 67 s 22, & 1951 c 222 s 23;

(16) RCW 18.85.360 (Witnesses—Depositions—Fees—Subpoenas) and 1997 c 322 s 25 & 1957 c 52 s 49;

(17) RCW 18.96.130 (Charges against registrants—Hearings—Findings—Penalties) and 1985 c 18 s 4 & 1969 ex.s. c 158 s 13;

(18) RCW 18.140.180 (Hearings—Orders—Judicial review) and 1993 c 30 s 20 & 1989 c 414 s 22;

(19) RCW 18.165.190 (Violations—Statement of charges—Hearings) and 1995 c 277 s 37 & 1991 c 328 s 19;

(20) RCW 18.165.200 (Application of administrative procedure act to hearings) and 1991 c 328 s 20;

(21) RCW 18.165.240 (Unlicensed practice—Complaints—Director’s authority—Injunctions—Penalty) and 1995 c 277 s 39 & 1991 c 328 s 24;

(22) RCW 18.165.250 (Violation of injunction—Penalty) and 1991 c 328 s 25;

(23) RCW 18.165.260 (Immunity) and 1991 c 328 s 26;

- (24) RCW 18.170.190 (Complaints—Investigation—Immunity) and 1995 c 277 s 14 & 1991 c 334 s 19;
- (25) RCW 18.170.200 (Violations—Statement of charges—Hearings) and 1991 c 334 s 20;
- (26) RCW 18.170.240 (Enforcement of orders for payment of fines) and 1991 c 334 s 24;
- (27) RCW 18.170.250 (Unlicensed practice—Complaints—Director's authority—Injunctions—Penalty) and 1995 c 277 s 16 & 1991 c 334 s 25;
- (28) RCW 18.170.260 (Violation of injunction—Penalty) and 1991 c 334 s 26;
- (29) RCW 18.170.270 (Immunity) and 1991 c 334 s 27;
- (30) RCW 18.185.150 (Hearing procedures) and 1993 c 260 s 16;
- (31) RCW 18.185.160 (Enforcement of monetary penalty) and 1993 c 260 s 17;
- (32) RCW 18.185.180 (Civil penalties) and 1993 c 260 s 19;
- (33) RCW 18.185.190 (Official immunity) and 1993 c 260 s 20;
- (34) RCW 19.16.360 (Licenses—Denial, suspension, revocation or refusal to renew—Civil penalty—Hearing) and 1977 ex.s. c 194 s 3, 1973 1st ex.s. c 20 s 4, & 1971 ex.s. c 253 s 27;
- (35) RCW 19.16.380 (Administrative procedure act—Application) and 1971 ex.s. c 253 s 29;
- (36) RCW 19.16.400 (Investigations or proceedings—Powers of director or designees—Contempt) and 1973 1st ex.s. c 20 s 5 & 1971 ex.s. c 253 s 31;
- (37) RCW 19.105.460 (Investigations—Powers relating to—Proceedings for contempt) and 1982 c 69 s 17;
- (38) RCW 19.138.190 (Investigations—Powers of director, officer) and 1994 c 237 s 16;
- (39) RCW 19.138.210 (Violations—Cease and desist order—Notice—Hearing) and 1994 c 237 s 17;
- (40) RCW 19.138.220 (Enjoining unregistered person—Additional to criminal liability) and 2001 c 44 s 3 & 1994 c 237 s 18;
- (41) RCW 19.138.230 (Violation of injunction—Penalties—Jurisdiction) and 1994 c 237 s 19;
- (42) RCW 19.138.300 (Administrative procedure act governs) and 1994 c 237 s 25;
- (43) RCW 19.158.060 (Failure to register—Penalty) and 1989 c 20 s 6;
- (44) RCW 64.36.180 (Entry of order—Summary order—Notice—Hearing) and 1983 1st ex.s. c 22 s 17;
- (45) RCW 64.36.190 (Director's powers—Application to superior court to compel compliance) and 1983 1st ex.s. c 22 s 18;
- (46) RCW 64.36.280 (Administration of chapter—Delegation of powers) and 1983 1st ex.s. c 22 s 27;
- (47) RCW 64.36.300 (Application of chapter 34.05 RCW) and 1983 1st ex.s. c 22 s 30;

(48) RCW 67.08.120 (Violation of rules—Penalties) and 1999 c 282 s 9, 1997 c 205 s 12, 1993 c 278 s 22, 1989 c 127 s 12, & 1933 c 184 s 18;

(49) RCW 67.08.210 (Unprofessional conduct—Investigation—Notice of charge—Request for hearing—Time of hearing—Notice) and 1997 c 205 s 18;

(50) RCW 67.08.230 (Fine—Order for payment—Enforcement—Proof of validity) and 1997 c 205 s 20;

(51) RCW 67.08.250 (Unlicensed practice or conduct violating chapter—Investigation—Cease and desist orders—Injunction in name of state—Criminal liability not precluded—Penalty) and 1997 c 205 s 22; and

(52) RCW 67.08.260 (Violation of injunction—Penalties—Jurisdiction) and 1997 c 205 s 23.

NEW SECTION. **Sec. 402.** Part headings used in this act are not any part of the law.

NEW SECTION. **Sec. 403.** (1) Sections 201 through 240 and 242 through 401 of this act take effect January 1, 2003.

(2) Section 241 of this act takes effect July 1, 2003.

NEW SECTION. **Sec. 404.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House February 15, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

**CHAPTER 87**

[House Bill 2553]

**CIGARETTE TAX CONTRACTS—ELIGIBLE TRIBES**

AN ACT Relating to increasing the number of eligible tribes for cigarette tax contracts; and amending RCW 43.06.460.

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

**Sec. 1.** RCW 43.06.460 and 2001 2nd sp.s. c 21 s 1 are each amended 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 Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, ~~((and))~~ the Upper Skagit Tribe, the Snoqualmie Tribe, and the Swinomish 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 RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455.

Passed the House February 15, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 21, 2002.

Filed in Office of Secretary of State March 21, 2002.

## CHAPTER 88

[Substitute House Bill 2557]

### METROPOLITAN PARK DISTRICTS

AN ACT Relating to metropolitan park districts; and amending RCW 35.61.010, 35.61.020, 35.61.030, 35.61.040, 35.61.050, 35.61.150, and 84.52.010.

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

**Sec. 1.** RCW 35.61.010 and 1994 c 81 s 60 are each amended to read as follows:

~~((Cities of five thousand or more population and such contiguous property the residents of which may decide in favor thereof in the manner set forth in this chapter may create))~~ A metropolitan park district may be created for the management, control, improvement, maintenance, and acquisition of parks, parkways, ((and)) boulevards, and recreational facilities. A metropolitan park district may include territory located in portions or all of one or more cities or counties, or one or more cities and counties, when created or enlarged as provided in this chapter.

**Sec. 2.** RCW 35.61.020 and 1965 c 7 s 35.61.020 are each amended to read as follows:

(1) When proposed by citizen petition or by local government resolution as provided in this section, a ballot proposition authorizing the creation of a metropolitan park district shall be submitted by resolution to the voters of the area proposed to be included in the district at any general election, or at any special election which may be called for that purpose((, or at any city election held in the city in all of the various voting precincts thereof, the city council or commission may, or on petition of fifteen percent of the qualified electors of the city based

upon the registration for the last preceding general city election, shall by ordinance, submit to the voters of the city the proposition of creating a metropolitan park district, the limits of which shall be coextensive with the limits of the city as now or hereafter established, inclusive of territory annexed to and forming a part of the city)).

(2) The ballot proposition shall be submitted if the governing body of each city in which all or a portion of the proposed district is located, and the legislative authority of each county in which all or a portion of the proposed district is located within the unincorporated portion of the county, each adopts a resolution submitting the proposition to create a metropolitan park district.

(3) As an alternative to the method provided under subsection (2) of this section, the ballot proposition shall be submitted if a petition proposing creation of a metropolitan park district is submitted to the county auditor of each county in which all or a portion of the proposed district is located that is signed by at least fifteen percent of the registered voters residing in the area to be included within the proposed district. Where the petition is for creation of a district in more than one county, the petition shall be filed with the county auditor of the county having the greater area of the proposed district, and a copy filed with each other county auditor of the other counties covering the proposed district.

Territory by virtue of its annexation to any city ((having heretofore created)) whose territory lies entirely within a park district shall be deemed to be within the limits of the metropolitan park district. ((The city council or commission shall submit the proposition at a special election to be called therefor when the petition so requests:)) Such an extension of a park district's boundaries shall not be subject to review by a boundary review board independent of the board's review of the city annexation of territory.

Sec. 3. RCW 35.61.030 and 1985 c 469 s 32 are each amended to read as follows:

((In submitting the question to the voters for their approval or rejection, the city council or commission shall pass an ordinance declaring its intention to submit the proposition of creating a metropolitan park district to the qualified voters of the city. The ordinance shall be published once a week for two consecutive weeks in the official newspaper of the city, and the city council or commission shall cause to be placed upon the ballot for the election, at the proper place.))

(1) Except as provided in subsection (2) of this section for review by a boundary review board, the ballot proposition authorizing creation of a metropolitan park district that is submitted to voters for their approval or rejection shall appear on the ballot of the next general election or at the next special election date specified under RCW 29.13.020 occurring sixty or more days after the last resolution proposing the creation of the park district is adopted or the date the county auditor certifies that the petition proposing the creation of the park district contains sufficient valid signatures. Where the petition or copy thereof is filed with two or more county auditors in the case of a proposed district in two or more

counties, the county auditors shall confer and issue a joint certification upon finding that the required number of signatures on the petition has been obtained.

(2) Where the proposed district is located wholly or in part in a county in which a boundary review board has been created, notice of the proposal to create a metropolitan park district shall be filed with the boundary review board as provided under RCW 36.93.090 and the special election at which a ballot proposition authorizing creation of the park district shall be held on the special election date specified under RCW 29.13.020 that is sixty or more days after the date the boundary review board is deemed to have approved the proposal, approves the proposal, or modifies and approves the proposal. The creation of a metropolitan park district is not subject to review by a boundary review board if the proposed district only includes one or more cities and in such cases the special election at which a ballot proposition authorizing creation of the park district shall be held as if a boundary review board does not exist in the county or counties.

(3) The petition proposing the creation of a metropolitan park district, or the resolution submitting the question to the voters, shall choose and describe the composition of the initial board of commissioners of the district that is proposed under RCW 35.61.050 and shall choose a name for the district. The proposition ((which)) shall ((be expressed in)) include the following terms:

"For the formation of a metropolitan park district to be governed by [insert board composition described in ballot proposition]."

"Against the formation of a metropolitan park district."

**Sec. 4.** RCW 35.61.040 and 1965 c 7 s 35.61.040 are each amended to read as follows:

If ((at an election)) a majority of the voters voting ((thereon)) on the ballot proposition authorizing the creation of the metropolitan park district vote in favor of the formation of a metropolitan park district, the metropolitan park district shall ((then)) be ((and become)) created as a municipal corporation effective immediately upon certification of the election results and its name shall be ((“Metropolitan Park District of . . . . . (inserting the name of the city).”) that designated in the ballot proposition.

**Sec. 5.** RCW 35.61.050 and 1994 c 223 s 23 are each amended to read as follows:

(1) The resolution or petition submitting the ballot proposition shall designate the composition of the board of metropolitan park commissioners from among the alternatives provided under subsections (2) through (4) of this section. The ballot proposition shall clearly describe the designated composition of the board.

(2) The commissioners of the district may be selected by election, in which case at the same election at which the proposition is submitted to the voters as to whether a metropolitan park district is to be formed, five park commissioners shall be elected. The election of park commissioners shall be null and void if the metropolitan park district is not created. Candidates shall run for specific commission positions. No primary shall be held to nominate candidates. The

person receiving the greatest number of votes for each position shall be elected as a commissioner. The staggering of the terms of office shall occur as follows: ~~((+))~~ (a) The two persons who are elected receiving the two greatest numbers of votes shall be elected to six-year terms of office if the election is held in an odd-numbered year or five-year terms of office if the election is held in an even-numbered year; ~~((2))~~ (b) the two persons who are elected receiving the next two greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year or three-year terms of office if the election is held in an even-numbered year; and ~~((3))~~ (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when they are elected and qualified, and for purposes of computing their terms of office the terms shall be assumed to commence on the first day of January in the year after they are elected. Thereafter, all commissioners shall be elected to six-year terms of office. All commissioners shall serve until their respective successors are elected and qualified and assume office in accordance with RCW 29.04.170. Vacancies shall occur and shall be filled as provided in chapter 42.12 RCW.

(3) In a district wholly located within a city or within the unincorporated area of a county, the governing body of such city or legislative authority of such county may be designated to serve in an ex officio capacity as the board of metropolitan park commissioners, provided that when creation of the district is proposed by citizen petition, the city or county approves by resolution such designation.

(4) Where the proposed district is located within more than one city, more than one county, or any combination of cities and counties, each city governing body and county legislative authority may be designated to collectively serve ex officio as the board of metropolitan park commissioners through selection of one or more members from each to serve as the board, provided that when creation of the district is proposed by citizen petition, each city governing body and county legislative authority approve by resolution such designation. Within six months of the date of certification of election results approving creation of the district, the size and membership of the board shall be determined through interlocal agreement of each city and county. The interlocal agreement shall specify the method for filling vacancies on the board.

(5) Metropolitan park districts created by a vote of the people prior to the effective date of this act may not change the composition and method of selection of their governing authority without approval of the voters. Should such a change be desired, the board of park commissioners shall submit a ballot proposition to the voters of the metropolitan park district.

**Sec. 6.** RCW 35.61.150 and 1998 c 121 s 1 are each amended to read as follows:

Metropolitan park commissioners selected by election according to RCW 35.61.050(2) shall perform their duties and may provide, by resolution passed by



the commissioners, for the payment of compensation to each of its commissioners at a rate of up to seventy dollars for each day or portion of a day devoted to the business of the district. However, the compensation for each commissioner must not exceed six thousand seven hundred twenty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed 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 months for which it is made.

**Sec. 7.** RCW 84.52.010 and 1995 2nd sp.s. c 13 s 4 are each amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents

per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

~~((e) Fifth))~~ (f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012.

Passed the House March 9, 2002.  
Passed the Senate March 2, 2002.  
Approved by the Governor March 21, 2002.  
Filed in Office of Secretary of State March 21, 2002.

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## CHAPTER 89

[Engrossed Substitute House Bill 1144]

### WORKFIRST—PARTICIPATION EXEMPTION

AN ACT Relating to the WorkFirst program participation exemption; and amending RCW 74.08A.270.

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

**Sec. 1.** RCW 74.08A.270 and 1997 c 58 s 314 are each amended to read as follows:

(1) Good cause reasons for failure to participate in WorkFirst program components include: ~~((H))~~ (a) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or ~~((2) until June 30, 1999, if)~~ (b) the recipient is a parent with a child under the age of one year, except that at the time a child reaches the age of three months, the recipient is required to participate in one of the following for up to twenty hours per week:

(i) Instruction or training which has the purpose of improving parenting skills or child well-being;

(ii) Preemployment or job readiness training;

(iii) Course study leading to a high school diploma or GED; or

(iv) Volunteering in a child care facility licensed under chapter 74.15 RCW so long as the child care facility agrees to accept the recipient as a volunteer and the child without compensation while the parent is volunteering at the facility. The volunteer recipient and his or her child shall not be counted for the purposes of determining licensed capacity or the staff to child ratio of the facility.

(2) Nothing in this section shall prevent a recipient from participating fully in the WorkFirst program on a voluntary basis. A recipient who chooses to participate fully in the WorkFirst program shall be considered to be fulfilling the requirements of this section.

(3) For any recipient who claims a good cause reason for failure to participate in the WorkFirst program based on the fact that the recipient has a child under the age of one year, the department shall, within existing resources, conduct an assessment of the recipient within ninety days and before a job search component is initiated in order to determine if the recipient has any specific service needs or employment barriers. The assessment may include identifying the need for

substance abuse treatment, mental health treatment, or domestic violence services, and shall be used in developing the recipient's individual responsibility plan.

~~(4) A parent may only receive ((this)) the exemption ((for a total of twelve months, which may be consecutive or nonconsecutive, or (3) after June 30, 1999, if the recipient is a parent with a child under three months of age))~~ under subsection (1)(b) of this section one time, for one child.

Passed the House February 19, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

**CHAPTER 90**

[Substitute House Bill 2015]

**PERSONAL INFORMATION—DISPOSAL**

AN ACT Relating to protecting personal information; 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 legislature finds that the careless disposal of personal information by commercial, governmental, or other entities poses a significant threat of identity theft, thus risking a person's privacy, financial security, and other interests. The alarming increase in identity theft crimes and other problems associated with the improper disposal of personal information can be traced, in part, to disposal policies and methods that make it easy for unscrupulous persons to obtain and use that information to the detriment of the public. Accordingly, the legislature declares that all organizations and individuals have a continuing obligation to ensure the security and confidentiality of personal information during the process of disposing of that information.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Entity" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group, engaged in a trade, occupation, enterprise, governmental function, or similar activity in this state, however organized and whether organized to operate at a profit.

(2) "Destroy personal information" means shredding, erasing, or otherwise modifying personal information in records to make the personal information unreadable or undecipherable through any reasonable means.

(3) "Individual" means a natural person, except that if the individual is under a legal disability, "individual" includes a parent or duly appointed legal representative.

(4) "Personal financial" and "health information" mean information that is identifiable to an individual and that is commonly used for financial or health care

purposes, including account numbers, access codes or passwords, information gathered for account security purposes, credit card numbers, information held for the purpose of account access or transaction initiation, or information that relates to medical history or status.

(5) "Personal identification number issued by a government entity" means a tax identification number, social security number, driver's license or permit number, state identification card number issued by the department of licensing, or any other number or code issued by a government entity for the purpose of personal identification that is protected and is not available to the public under any circumstances.

(6) "Record" includes any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. "Record" does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

**NEW SECTION. Sec. 3.** (1) An entity must take all reasonable steps to destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual's records within its custody or control when the entity is disposing of records that it will no longer retain.

(2) An entity is not liable under this section for records it has relinquished to the custody and control of the individual to whom the records pertain.

(3) This subsection does not apply to the disposal of records by a transfer of the records, not otherwise prohibited by law, to another entity, including a transfer to archive or otherwise preserve public records as required by law.

(4) An individual injured by the failure of an entity to comply with subsection (1) of this section may bring a civil action in a court of competent jurisdiction. The court may:

(a) If the failure to comply is due to negligence, award a penalty of two hundred dollars or actual damages, whichever is greater, and costs and reasonable attorneys' fees; and

(b) If the failure to comply is willful, award a penalty of six hundred dollars or damages equal to three times actual damages, whichever is greater, and costs and reasonable attorneys' fees. However, treble damages may not exceed ten thousand dollars.

(5) An individual having reason to believe that he or she may be injured by an act or failure to act that does not comply with subsection (1) of this section may apply to a court of competent jurisdiction to enjoin the act or failure to act. The court may grant an injunction with terms and conditions as the court may deem equitable.

(6) The attorney general may bring a civil action in the name of the state for damages, injunctive relief, or both, against an entity that fails to comply with

subsection (1) of this section. The court may award damages that are the same as those awarded to individual plaintiffs under subsection (4) of this section.

(7) The rights and remedies provided under this section are in addition to any other rights or remedies provided by law.

NEW SECTION. **Sec. 4.** Any bank, financial institution, health care organization, or other entity that is subject to the federal regulations under the interagency guidelines establishing standards for safeguarding customer information (12 C.F.R. 208 Appendix D-2, 12 C.F.R. 364 Appendix B, 12 C.F.R. 30 Appendix B, 12 C.F.R. 570 Appendix B); the guidelines for safeguarding member information (12 C.F.R. 748 Appendix A); and the standards for privacy of individually identifiable health information (45 C.F.R. 160 and 164), and which is in compliance with these federal guidelines, is in compliance with the requirements of this chapter.

NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute a new chapter in Title 19 RCW.

Passed the House February 16 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

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**CHAPTER 91**

[House Bill 2318]

**HEALTH CARE FACILITIES AUTHORITY—INSURANCE COMMISSIONER**

AN ACT Relating to the insurance commissioner's participation on the Washington health care facilities authority; and amending RCW 70.37.030.

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

**Sec. 1.** RCW 70.37.030 and 1989 1st ex.s. c 9 s 261 are each amended to read as follows:

There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010(~~as now or hereafter amended~~). The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the secretary of health, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, on the basis of the member's interest or expertise in health care delivery, for a term expiring on the fourth anniversary of the date of appointment. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be

entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060. A majority shall constitute a quorum.

The governor and the insurance commissioner each may designate an employee of ~~((the governor's))~~ his or her office to act on his or her behalf ~~((of the governor))~~ during the absence of the governor or the insurance commissioner at one or more of the meetings of the authority. The vote of the designee shall have the same effect as if cast by the governor or the insurance commissioner if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence.

Passed the House February 12, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 92

[Substitute House Bill 2414]

### PROFESSIONAL EDUCATOR STANDARDS BOARD

AN ACT Relating to the professional educator standards board; and amending RCW 28A.410.200 and 28A.410.220.

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

**Sec. 1.** RCW 28A.410.200 and 2000 c 39 s 102 are each amended to read as follows:

(1)(a) The Washington professional educator standards board is created, consisting of nineteen members to be appointed by the governor to four-year terms and the superintendent of public instruction, who shall be an ex officio, nonvoting member.

(b) As the four-year terms of the first appointees expire or vacancies to the board occur for the first time, the governor shall appoint or reappoint the members of the board to one-year to four-year staggered terms. Once the one-year to three-year terms expire, all subsequent terms shall be for four years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(c) No person may serve as a member of the board for more than two consecutive full four-year terms.

(d) The governor shall annually appoint the chair of the board from among the teachers and principals on the board. No board member may serve as chair for more than two consecutive years.

(2) Seven of the members shall be public school teachers, one shall be a private school teacher, three shall represent higher education educator preparation programs, four shall be school administrators, two shall be educational staff associates, one shall be a parent, and one shall be a member of the public.

(3) Public school teachers appointed to the board must:

(a) Have at least three years of teaching experience in a Washington public school;

(b) Be currently certificated and actively employed in a teaching position; and

(c) Include one teacher currently teaching at the elementary school level, one at the middle school level, one at the high school level, and one vocationally certificated.

(4) Private school teachers appointed to the board must:

(a) Have at least three years of teaching experience in a Washington approved private school; and

(b) Be currently certificated and actively employed in a teaching position in an approved private school.

(5) Appointees from higher education educator preparation programs must include two representatives from institutions of higher education as defined in RCW 28B.10.016 and one representative from an institution of higher education as defined in RCW 28B.07.020(4).

(6) School administrators appointed to the board must:

(a) Have at least three years of administrative experience in a Washington public school district;

(b) Be currently certificated and actively employed in a school administrator position; and

(c) Include two public school principals, one Washington approved private school principal, and one superintendent.

(7) Educational staff associates appointed to the board must:

(a) Have at least three years of educational staff associate experience in a Washington public school district; and

(b) Be currently certificated and actively employed in an educational staff associate position.

(8) Each major caucus of the house of representatives and the senate shall submit a list of at least one public school teacher. In making the public school teacher appointments, the governor shall select one nominee from each list provided by each caucus. The governor shall appoint the remaining members of the board from a list of qualified nominees submitted to the governor by organizations representative of the constituencies of the board, from applications from other qualified individuals, or from both nominees and applicants.

(9) All appointments to the board made by the governor shall be subject to confirmation by the senate.

(10) The governor shall appoint the members of the initial board no later than June 1, 2000.



(11) In appointing board members, the governor shall consider the diversity of the population of the state.

(12) Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(13) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(14) If a vacancy occurs on the board, the governor shall appoint a replacement member from the nominees as specified in subsection (8) of this section to fill the remainder of the unexpired term. When filling a vacancy of a member nominated by a major caucus of the legislature, the governor shall select the new member from a list of at least one name submitted by the same caucus that provided the list from which the retiring member was appointed.

(15) Members of the board shall hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes only.

**Sec. 2.** RCW 28A.410.220 and 2000 c 39 s 201 are each amended to read as follows:

(1)(a) Beginning not later than September 1, 2001, the Washington professional educator standards board shall make available and pilot a means of assessing an applicant's knowledge in the basic skills. For the purposes of this section, "basic skills" means the subjects of at least reading, writing, and mathematics. Beginning September 1, 2002, except as provided in (c) of this subsection and subsection (3) of this section, passing this assessment shall be required for admission to approved teacher preparation programs and for persons from out-of-state applying for a Washington state residency teaching certificate.

(b) On an individual student basis, approved teacher preparation programs may admit into their programs a candidate who has not achieved the minimum basic skills assessment score established by the Washington professional educator standards board. Individuals so admitted may not receive residency certification without passing the basic skills assessment under this section.

(c) The Washington professional educator standards board may establish criteria to ensure that persons from out-of-state who are applying for residency certification and persons applying to master's degree level teacher preparation programs can demonstrate to the board's satisfaction that they have the requisite basic skills based upon having completed another basic skills assessment acceptable to the Washington professional educator standards board or by some

other alternative approved by the Washington professional educator standards board.

(2) Beginning not later than September 1, 2002, the Washington professional educator standards board shall provide for the initial piloting and implementation of a means of assessing an applicant's knowledge in the subjects for which the applicant has applied for an endorsement to his or her residency or professional teaching certificate. The assessment of subject knowledge shall not include instructional methodology. Beginning September 1, ~~((2003))~~ 2005, passing this assessment shall be required to receive an endorsement for certification purposes.

(3) The Washington professional educator standards board may permit exceptions from the assessment requirements under subsections (1) and (2) of this section on a case-by-case basis.

(4) The Washington professional educator standards board shall provide for reasonable accommodations for individuals who are required to take the assessments in subsection (1) or (2) of this section if the individuals have learning or other disabilities.

(5) With the exception of applicants exempt from the requirements of subsections (1) and (2) of this section, an applicant must achieve a minimum assessment score or scores established by the Washington professional educator standards board on each of the assessments under subsections (1) and (2) of this section.

(6) The Washington professional educator standards board and superintendent of public instruction, as determined by the Washington professional educator standards board, may contract with one or more third parties for:

(a) The development, purchase, administration, scoring, and reporting of scores of the assessments established by the Washington professional educator standards board under subsections (1) and (2) of this section;

(b) Related clerical and administrative activities; or

(c) Any combination of the purposes in this subsection.

(7) Applicants for admission to a Washington teacher preparation program and applicants for residency and professional certificates who are required to successfully complete one or more of the assessments under subsections (1) and (2) of this section, and who are charged a fee for the assessment by a third party contracted with under subsection (6) of this section, shall pay the fee charged by the contractor directly to the contractor. Such fees shall be reasonably related to the actual costs of the contractor in providing the assessment.

(8) The superintendent of public instruction is responsible for supervision and providing support services to administer this section.

(9) The Washington professional educator standards board shall collaboratively select or develop and implement the assessments and minimum assessment scores required under this section with the superintendent of public instruction and shall provide opportunities for representatives of other interested educational organizations to participate in the selection or development and

implementation of such assessments in a manner deemed appropriate by the Washington professional educator standards board.

(10) The Washington professional educator standards board shall adopt rules under chapter 34.05 RCW that are reasonably necessary for the effective and efficient implementation of this section.

Passed the House February 13, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 93

[House Bill 2526]

### ENVIRONMENTAL POLICY ACT—DISINCORPORATION—REDUCTION

AN ACT Relating to exemptions from the state environmental policy act for reductions of city limits and disincorporations; adding a new section to chapter 43.21C RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** Incorporations and annexations are exempt from the state environmental policy act. However, there are no comparable exemptions for reductions of city limits or disincorporations. It is the legislature's intent to provide that a reduction in city limits or disincorporation is not subject to the state environmental policy act.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.21C RCW to read as follows:

(1) The disincorporation of a city or town is exempt from compliance with this chapter.

(2) The reduction of city or town limits is exempt from compliance with this chapter.

Passed the House February 12, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 94

[House Bill 2527]

### DAY LABOR LIMITS

AN ACT Relating to revising certain day labor limits to account for inflation; and amending RCW 35.22.620 and 35.23.352.

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

**Sec. 1.** RCW 35.22.620 and 2000 c 138 s 203 are each amended to read as follows:

(1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population in excess of one hundred fifty thousand shall not have public employees perform a public works project in excess of ~~((fifty))~~ seventy thousand dollars, or ninety thousand dollars after January 1, 2010, if more than a single craft or trade is involved with the public works project, or a public works project in excess of ~~((twenty-five))~~ thirty-five thousand dollars, or forty-five thousand dollars after January 1, 2010, if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population of one hundred fifty thousand or less shall not have public employees perform a public works project in excess of ~~((thirty-five))~~ fifty thousand dollars, or sixty-five thousand dollars after January 1, 2010, if more than one craft or trade is involved with the public works project, or a public works project in excess of ~~((twenty))~~ thirty thousand dollars, or forty thousand dollars after January 1, 2010, if only a single craft or trade is involved with the public works project or the public works project

is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

Each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to RCW 39.04.280 if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may let contracts using the small works roster process in RCW 39.04.155.

Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(~~((3))~~) (4), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

**Sec. 2.** RCW 35.23.352 and 2000 c 138 s 204 are each amended to read as follows:

(1) Any second class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of ~~((thirty))~~ forty-five thousand dollars, or sixty thousand dollars after January 1, 2010, if more than one

craft or trade is involved with the public works, or ~~((twenty))~~ thirty thousand dollars, or forty thousand dollars after January 1, 2010, if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. 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.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second class city or a town may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(4) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, or equipment, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and formal sealed bidding to be dispensed with as to purchases with an estimated value of fifteen thousand dollars or less, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(9) The city or town legislative authority may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020~~((+))~~ (4), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Passed the House February 15, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 95

[House Bill 2571]

### PORT DISTRICTS—PAYMENT OF CLAIMS

AN ACT Relating to authorizing port districts to pay claims or other obligations by check or warrant; and adding a new section to chapter 53.36 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 53.36 RCW to read as follows:

A port district that acts as its own treasurer as provided in RCW 53.36.010, may by resolution adopt a policy for the payment of claims or other obligations of the port district, which are payable out of solvent funds, electing either to pay obligations by warrant or by check. However, no check shall be issued when the applicable fund is not solvent at the time payment is ordered, but a warrant shall be issued instead. When checks are to be used, the port commission shall designate the qualified public depository where checks are to be drawn, and the officers authorized or required to sign checks. Wherever in this title reference is made to warrants, the term includes checks where authorized by this section.

Passed the House February 12, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 96

[House Bill 2588]

### PRESCRIPTION LABELS

AN ACT Relating to information required to appear on a prescription label; and amending RCW 18.64.246.

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

**Sec. I.** RCW 18.64.246 and 1984 c 153 s 13 are each amended to read as follows:

To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the ~~((pharmacy wherein the prescription is compounded, the corresponding serial number of the prescription, the name of the prescriber, his directions, the name of the medicine and the strength per unit dose, name of patient, date, the expiration date, and initials of the licensed pharmacist who has compounded the prescription, and))~~ dispensing pharmacy, the prescription number, the name of the prescriber, the prescriber's directions, the name and strength of the medication, the name of the patient, the date, and the expiration date. The security of the cover or cap on every bottle or jar shall meet safety standards ~~((promulgated))~~ adopted by the state board of pharmacy ~~((- PROVIDED, That))~~. At the ~~((physician's))~~ prescriber's request, the name and ~~((dosage))~~ strength of the ~~((drug))~~ medication need not be shown. If the prescription is for a combination ~~((drug))~~ medication product, the generic names of the ~~((drugs))~~ medications combined or the trade name used by the manufacturer or distributor for the product shall be noted on the label. The identification of the licensed pharmacist responsible for each dispensing of medication must either be recorded in the pharmacy's record system or on the prescription label. This section shall not apply to the dispensing of ~~((medicines))~~ medications to in-patients in hospitals.



Passed the House February 14, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 97

[House Bill 2605]

### THEFT—DEGREE DETERMINATION

AN ACT Relating to aggregating value for purposes of determining the degree of theft; and amending RCW 9A.56.010.

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

**Sec. 1.** RCW 9A.56.010 and 1999 c 143 s 36 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of . . . .," "owned by . . . .," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(8) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(9) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(10) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(11) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(12) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(13) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(14) "Stolen" means obtained by theft, robbery, or extortion;

(15) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(16) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(17) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the

transmission, transfer, or reception of a telephonic communication or an electronic communication;

(18) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(19) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent

authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

Passed the House February 16, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

**CHAPTER 98**

[Substitute House Bill 2629]

**ELEVATOR CONTRACTORS AND MECHANICS**

AN ACT Relating to licensing elevator contractors and mechanics; amending RCW 70.87.010, 70.87.020, 70.87.030, 70.87.050, 70.87.100, 70.87.125, 70.87.145, 70.87.170, and 70.87.180; adding new sections to chapter 70.87 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 70.87.010 and 1998 c 137 s 1 are each amended to read as follows:

For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section;

(3) "Existing installations" means ~~((all conveyances for which plans were completed and accepted by the owner, or for which the plans and specifications have been filed with and approved by the department before June 13, 1963, and work on the erection of which was begun not more than twelve months thereafter))~~ an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) has no landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means an elevator, as defined by subsections (2) and (4) of this section, that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which no persons are normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department to construct, install, or operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another;

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material ~~((hoist[s]))~~ hoists;

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public;

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings;

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by physically handicapped persons;

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by physically handicapped persons;

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials;

(23) "Advisory committee" means the elevator advisory committee as described in this chapter;

(24) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice;

(25) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in erecting, constructing, installing, altering, serving, repairing, or maintaining elevators or related conveyances covered by this chapter;

(26) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this chapter;

(27) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in section 12 of this act;

(28) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in section 12 of this act;

(29) "Licensee" means the elevator mechanic or elevator contractor.

Sec. 2. RCW 70.87.020 and 1983 c 123 s 2 are each amended to read as follows:

(1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe, design, mechanical and electrical operation, erection, installation, alteration, maintenance, inspection, and repair of conveyances, and all such operation, erection, installation, alteration, inspection, and repair subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules(, and regulations)) of the department. The use of unsafe and defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Elevator personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety hazards and performing the procedures to which they are assigned in conformance with the requirements of the chapter. This chapter establishes the minimum standards for elevator personnel.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the operation, erection, installation, alteration, maintenance, inspection, and repair of the conveyance is reasonably safe to persons and property.

Sec. 3. RCW 70.87.030 and 1998 c 137 s 2 are each amended to read as follows:

The department shall adopt rules governing the mechanical and electrical operation, erection, installation, alterations, inspection, acceptance tests, and repair of conveyances that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for the safe mechanical operation, erection, installation, alteration, inspection, and repair of conveyances, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall



establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and/or inspection of elevators, dumbwaiters, and escalators, etcetera; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector.

**Sec. 4.** RCW 70.87.050 and 1983 c 123 s 5 are each amended to read as follows:

The operation, erection, installation, alteration, maintenance, inspection, and repair of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department.

**Sec. 5.** RCW 70.87.100 and 1983 c 123 s 11 are each amended to read as follows:

(1) All new conveyance installations, relocations, or alterations must be performed by a person, firm, or company to which a license to install, relocate, or alter conveyances has been issued.

(2) The person or firm installing, relocating, or altering a conveyance shall notify the department (~~(in writing, at least seven days)~~) before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

~~((2))~~ (3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified.

**Sec. 6.** RCW 70.87.125 and 1983 c 123 s 10 are each amended to read as follows:

(1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

- (a) Any false statement as to a material matter in the application;
- (b) Fraud, misrepresentation, or bribery in securing a license;
- (c) Failure to notify the department and the owner or lessee of an elevator or related mechanisms of any condition not in compliance with this chapter; and
- (d) A violation of any provisions of this chapter.

(2) The department may suspend or revoke a permit if:

- (a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been constructed, installed, maintained, or repaired in accordance with the requirements of this chapter; or

(c) The conveyance has become unsafe.

~~((2))~~ (3) The department shall notify in writing the owner, licensee, or person installing the conveyance, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

~~((3))~~ (4)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the elevator personnel performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or is not constructed, installed, maintained, or repaired in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

~~((4))~~ (5) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(6) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter.

**Sec. 7.** RCW 70.87.145 and 1983 c 123 s 15 are each amended to read as follows:

(1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if the conveyance:

(a) Has not been constructed, installed, maintained, or repaired in accordance with the requirements of this chapter; or

(b) Has otherwise become unsafe.

The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may request

a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory performance by licensed persons, firms, or companies, and assist in development of public awareness programs.

**Sec. 8.** RCW 70.87.170 and 1983 c 123 s 16 are each amended to read as follows:

(1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW.

**Sec. 9.** RCW 70.87.180 and 1983 c 123 s 17 are each amended to read as follows:

(1) The construction, installation, relocation, alteration, maintenance, or operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. No prosecution may be maintained where the issuance or renewal of a permit has been requested but upon which no action has been taken by the department.

(2) The construction, installation, relocation, alteration, maintenance, or operation of a conveyance without a license by any person is a misdemeanor. Each day of violation is a separate offense. No prosecution may be maintained where the issuance or renewal of a license has been requested by an applicant but upon which no action has been taken by the department.

**NEW SECTION. Sec. 10.** A new section is added to chapter 70.87 RCW to read as follows:

No person shall erect, construct, wire, alter, replace, maintain, remove, or dismantle any conveyance contained within a building or structures within the jurisdiction of this state unless he or she has an elevator mechanic license and the person is working under the direct supervision of a person, firm, or company who has an elevator contractors license pursuant to this chapter. A person, firm, or company is not required to have an elevator contractors license for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

**NEW SECTION. Sec. 11.** A new section is added to chapter 70.87 RCW to read as follows:

The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances. The advisory committee consists of five persons appointed by the director of the department or his or her designee with the advice of the chief elevator inspector. The committee members shall serve four years.

The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief of the elevator section. The committee members shall serve without per diem or travel expenses.

The chief elevator inspector shall be the secretary for the advisory committee.

**NEW SECTION. Sec. 12.** A new section is added to chapter 70.87 RCW to read as follows:

(1) Any person, firm, or company wishing to engage in the business of installing, altering, servicing, replacing, or maintaining elevators, dumbwaiters, escalators, or moving sidewalks within the jurisdiction must make application for a license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Any person wishing to engage in installing, altering, repairing, or servicing elevators, dumbwaiters, escalators, or moving sidewalks within the jurisdiction must make application for a license with the department on a form provided by the department.

(3) No elevator contractor license may be granted to any person or firm who has not proven to possess the following qualifications:

(a) Five years' work experience in the elevator industry in construction, maintenance, and service or repair, as verified by current and previous elevator contractor licenses to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) No elevator mechanic license may be granted to any person who has not proven to possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' work experience in the elevator industry, in construction, or maintenance and service or repair, as verified by current and previous employers licensed to do business in this state; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has worked as an elevator constructor, or as a maintenance or repair person shall upon making application for a license and paying the license fee is entitled to receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for an elevator contractor licensed to do business in this state. This employment may not be less than three years immediately before the effective date of this act. The person must make application within one year of the effective date of this act;

(b) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(c) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination.

**NEW SECTION. Sec. 13.** A new section is added to chapter 70.87 RCW to read as follows:

(1) Upon approval of an application, the department may issue a license that is biannually renewable. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular elevators or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license must be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section.

**NEW SECTION. Sec. 14.** A new section is added to chapter 70.87 RCW to read as follows:

This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing, or repairing any elevator or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder.

Passed the House February 19, 2002.  
Passed the Senate March 6, 2002.  
Approved by the Governor March 22, 2002.  
Filed in Office of Secretary of State March 22, 2002.

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## CHAPTER 99

[Engrossed Substitute House Bill 2662]

### PAYROLL DEDUCTIONS—INDIVIDUAL PROVIDERS

AN ACT Relating to making payroll deductions for individual providers as defined in RCW 74.39A.240(4); reenacting and amending RCW 41.56.030; and adding a new section to chapter 41.56 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 41.56 RCW to read as follows:

(1) Upon the written authorization of an individual provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, deduct from the payments to an individual provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2) If the home care quality authority and the exclusive bargaining representative of a bargaining unit of individual providers enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the state, as payor, but not as the employer, shall, subject to subsection (3) of this section, make such deductions upon written authorization of the individual provider.

(3)(a) The initial additional costs to the state in making deductions from the payments to individual providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(b) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the home care quality authority unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining

representative and the home care quality authority, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, the ongoing additional costs to the state in making deductions from the payments to individual providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

**Sec. 2.** RCW 41.56.030 and 2000 c 23 s 1 and 2000 c 19 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner, or (f) excluded from a bargaining unit under RCW 41.56.201(2)(a). For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by



such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(9) "Home care quality authority" means the authority under chapter 74.39A RCW.

(10) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is employed by the home care quality authority as provided in RCW 74.39A.270.

Passed the House February 18, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

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## CHAPTER 100

[House Bill 2824]

### LONG-TERM CARE OMBUDSMAN—CONFLICT OF INTEREST

AN ACT Relating to conflict of interest provisions for the long-term care ombudsman program; and amending RCW 43.190.040.

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

**Sec. 1.** RCW 43.190.040 and 1983 c 290 s 4 are each amended to read as follows:

(1) Any long-term care ombudsman authorized by this chapter or a local governmental authority shall have training or experience or both in the following areas:

(a) Gerontology, long-term care, or other related social services programs.

(b) The legal system.

(c) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(2) A long-term care ombudsman shall not have been employed by or participated in the management of any long-term care facility within the past ~~((three years))~~ year.

(3) A long-term care ombudsman shall not have been employed in a governmental position with direct involvement in the licensing, certification, or regulation of long-term care facilities within the past year.

(4) No long-term care ombudsman or any member of his or her immediate family shall have, or have had within the past ~~((three years))~~ year, any ~~((pecuniary))~~ significant ownership or investment interest in ~~((the provision of long-term health care facilities))~~ one or more long-term care facilities.

(5) A long-term care ombudsman shall not be assigned to a long-term care facility in which a member of that ombudsman's immediate family resides

Passed the House February 14, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 101

[Substitute House Bill 2834]

### PUBLIC SCHOOLS—CHILDREN WITH LIFE-THREATENING CONDITIONS

AN ACT Relating to requiring a medication or treatment order as a condition for children with life-threatening conditions to attend public school; and adding a new section to chapter 28A.210 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.210 RCW to read as follows:

(1) The attendance of every child at every public school in the state shall be conditioned upon the presentation before or on each child's first day of attendance at a particular school of a medication or treatment order addressing any life-threatening health condition that the child has that may require medical services to be performed at the school. Once such an order has been presented, the child shall be allowed to attend school.

(2) The chief administrator of every public school shall prohibit the further presence at the school for any and all purposes of each child for whom a

medication or treatment order has not been provided in accordance with this section if the child has a life-threatening health condition that may require medical services to be performed at the school and shall continue to prohibit the child's presence until such order has been provided. The exclusion of a child from a school shall be accomplished in accordance with rules of the state board of education. Before excluding a child, each school shall provide written notice to the parents or legal guardians of each child or to the adults in loco parentis to each child, who is not in compliance with the requirements of this section. The notice shall include, but not be limited to, the following: (a) The requirements established by this section; (b) the fact that the child will be prohibited from further attendance at the school unless this section is complied with; and (c) such procedural due process rights as are established pursuant to this section.

(3) The state board of education shall adopt rules under chapter 34.05 RCW that establish the procedural and substantive due process requirements governing the exclusion of children from public schools under this section. The rules shall include any requirements under applicable federal laws.

(4) As used in this section, "life-threatening condition" means a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(5) As used in this section, "medication or treatment order" means the authority a registered nurse obtains under RCW 18.79.260(2).

Passed the House February 14, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 102

[House Bill 2902]

### LOCAL GOVERNMENT UTILITY AUTHORITY

AN ACT Relating to local government utility authority; amending RCW 35.92.010 and 35.92.050; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** The purpose of this act is to affirm the authority of cities and towns to operate fire hydrants and streetlights as part of their rate-based water and electric utilities, respectively. The legislature finds that it has been the practice of most, if not all, cities and towns, as well as water and sewer districts, to include the operation of fire hydrants for fire and maintenance purposes and to incorporate the cost of this operation as a normal part of the utility's services and general rate structure. The legislature further finds and declares that it has been the intent of the legislature that cities and towns, just as water and sewer districts, have the right to operate and maintain streetlights in the same manner as fire hydrants,

that is, as a normal part of the electric utility and a normal part of that utility's general rate structure. The legislature therefore affirms that authority.

**Sec. 2.** RCW 35.92.010 and 1991 c 347 s 18 are each amended to read as follows:

A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate waterworks, including fire hydrants as an integral utility service incorporated within general rates, within or without its limits, for the purpose of furnishing the city and its inhabitants, and any other persons, with an ample supply of water for all purposes, public and private, including water power and other power derived therefrom, with full power to regulate and control the use, distribution, and price thereof: PROVIDED, That the rates charged must be uniform for the same class of customers or service. Such waterworks may include facilities for the generation of electricity as a byproduct and such electricity may be used by the city or town or sold to an entity authorized by law to distribute electricity. Such electricity is a byproduct when the electrical generation is subordinate to the primary purpose of water supply.

In classifying customers served or service furnished, the city or town governing body may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; location of the various customers within and without the city or town; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the water furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful water use practices; capital contributions made to the system including, but not limited to, assessments; and any other matters which present a reasonable difference as a ground for distinction. No rate shall be charged that is less than the cost of the water and service to the class of customers served.

For such purposes any city or town may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake or watercourse, surface or ground, and, by means of aqueducts or pipe lines, conduct it to the city or town; and it may erect and build dams or other works across or at the outlet of any lake or watercourse in this state for the purpose of storing and retaining water therein up to and above high water mark; and for all the purposes of erecting such aqueducts, pipe lines, dams, or waterworks or other necessary structures in storing and retaining water, or for any of the purposes provided for by this chapter, the city or town may occupy and use the beds and shores up to the high water mark of any such watercourse or lake, and acquire the right by purchase, or by condemnation and purchase, or otherwise, to any water, water rights, easements or privileges named in this chapter, or necessary for any of said purposes, and the city or town may acquire by purchase or condemnation and purchase any properties or privileges necessary to be had to protect its water supply from pollution. Should private property be necessary for any such purposes or for

storing water above high water mark, the city or town may condemn and purchase, or purchase and acquire such private property. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a city or town that does not own or operate an electric utility system to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner.

**Sec. 3.** RCW 35.92.050 and 1985 c 445 s 9 are each amended to read as follows:

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, and other means of power and facilities for lighting, including streetlights as an integral utility service incorporated within general rates, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof.

**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 February 19, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

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## CHAPTER 103

[Substitute Senate Bill 5099]

### INSURANCE—DENTAL ONLY COVERAGE

AN ACT Relating to the designation of licensed dental directors by carriers offering dental only coverage; and amending RCW 48.43.540.

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

**Sec. 1.** RCW 48.43.540 and 2000 c 5 s 13 are each amended to read as follows:

Any carrier that offers a health plan and any self-insured health plan subject to the jurisdiction of Washington state shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. However, a naturopathic or

complementary alternative health plan, which provides solely complementary alternative health care to individuals, groups, or health plans, may have a medical director licensed under chapter 18.36A RCW. A carrier that offers dental only coverage shall designate a dental director who is licensed under chapter 18.32 RCW, or licensed in a state that has been determined by the dental quality assurance commission to have substantially equivalent licensing standards to those of Washington. A health plan or self-insured health plan that offers only religious nonmedical treatment or religious nonmedical nursing care shall not be required to have a medical director.

Passed the Senate March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 104

[Senate Bill 5999]

### TELEPHONE ASSISTANCE PROGRAM

AN ACT Relating to the Washington telephone assistance program: amending RCW 80.36.005, 80.36.410, and 80.36.470; and providing an expiration date.

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

**Sec. 1.** RCW 80.36.005 and 1993 c 249 s 1 are each amended to read as follows:

~~((As used in this chapter))~~ The definitions in this section apply throughout RCW 80.36.410 through 80.36.475, unless the context ((indicates)) clearly requires otherwise(;;).

(1) "Community agency" means local community agencies that administer community service voice mail programs.

(2) "Community service voice mail" means a computerized voice mail system that provides low-income recipients with: (a) An individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a private security code to retrieve messages.

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

(4) "Service year" means the period between July 1st and June 30th.

**Sec. 2.** RCW 80.36.410 and 1987 c 229 s 3 are each amended to read as follows:

The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that: (1) Recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service; and (2) many low-income persons making the transition to independence from receiving supportive services through community agencies do not qualify for economic assistance from the department. Therefore, the legislature

finds that it is in the public interest to take steps to mitigate the effects of these changes on low-income persons.

**Sec. 3.** RCW 80.36.470 and 1990 c 170 s 6 are each amended to read as follows:

(1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility.

(2) Participants in community service voice mail programs are eligible for participation in the telephone assistance program after completing use of community service voice mail services. Eligibility shall be for a period including the remainder of the current service year and the following service year. Community agencies shall notify the department of participants eligible under this subsection.

**NEW SECTION. Sec. 4.** Sections 2 and 3 of this act expire June 30, 2003.

Passed the Senate February 14, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 105

[Engrossed Substitute Senate Bill 6060]  
HAZARDOUS SUBSTANCES TAX

AN ACT Relating to updating references for purposes of the hazardous substances tax for periods beginning July 1, 2002; amending RCW 82.21.020; and providing an effective date.

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

**Sec. 1.** RCW 82.21.020 and 1989 c 2 s 9 are each amended to read as follows:

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

(1) "Hazardous substance" means:

(a) Any substance that, on March 1, ~~((1989))~~ 2002, is a hazardous substance under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc;

(b) Petroleum products;

(c) Any pesticide product required to be registered under section 136a of the federal insecticide, fungicide and rodenticide act, 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

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

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

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

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

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

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

**NEW SECTION. Sec. 2.** This act takes effect July 1, 2002.

Passed the Senate February 15, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.



## CHAPTER 106

[Senate Bill 6283]

## PUBLIC HOSPITAL DISTRICTS—COMPETITIVE BIDDING REQUIREMENTS

AN ACT Relating to competitive bidding requirements for public hospital districts; and amending RCW 70.44.140.

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

**Sec. 1.** RCW 70.44.140 and 2000 c 138 s 213 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of ~~((five))~~ fifty thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: **PROVIDED, HOWEVER,** That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: **PROVIDED, HOWEVER,** That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

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

Passed the Senate February 13, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 107

[Substitute Senate Bill 6423]

### SENTENCING—CRIMINAL HISTORY

AN ACT Relating to use of criminal history in sentencing decisions; amending RCW 9.94A.525; reenacting and amending RCW 9.94A.030; creating new sections; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense.

**Sec. 2.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, 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.

(6) "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.850, for crimes committed on or after July 1, 2000.

(7) "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.

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

(9) "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.

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

(11) "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.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction ~~((a))~~ (i) whether the defendant has been placed on probation and the length and terms thereof; and ~~((b))~~ (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(14) "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.

(15) "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.

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

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(18) "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.

(19) "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.

(20) "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.

(21) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "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.

(24) "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.

(25) "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.

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

(27) "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.

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

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

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(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.

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

(30) "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.

(31) "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.

(32) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in

the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(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.

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

(34) "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.

(35) "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.

(36) "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.

(37) "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.

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.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.835 or 13.40.135; or

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

(39) "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.

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

(41) "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.

(42) "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.

(43) "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.

(44) "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.

(45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

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

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

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

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "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. 3.** RCW 9.94A.525 and 2001 c 264 s 5 are each amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2) Class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as

separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those

used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.

(12) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

(18) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Accordingly, prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions.

NEW SECTION. Sec. 4. RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after the effective date of this act. No offender who committed his or her current offense prior to the effective date of this act may be subject to resentencing as a result of this act.

Passed the Senate February 18, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

**CHAPTER 108**

[Senate Bill 6529]

**ELECTIONS—VACANCIES IN OFFICE**

AN ACT Relating to holding or lapsing elections due to vacancies in public office; and amending RCW 29.15.190 and 42.12.040.

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

**Sec. 1.** RCW 29.15.190 and 1975-76 2nd ex.s. c 120 s 12 are each amended to read as follows:

A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when:

(1) In an election for judge of the supreme court or superintendent of public instruction, a void in candidacy occurs on or after the ((fourth)) sixth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;

(2) Except as otherwise specified in RCW 29.15.180, as now or hereafter amended, 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 on or after the ((fourth)) sixth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the ((fourth)) sixth Tuesday prior to an election.

**Sec. 2.** RCW 42.12.040 and 1981 c 180 s 1 are each amended to read as follows:

If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the ((fourth)) sixth Tuesday prior to the primary for the next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the ((fourth)) sixth Tuesday prior to the primary for that general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

Passed the Senate February 13, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 109

[Senate Bill 6601]

## LIQUOR SALES—LEASED PROPERTY

AN ACT Relating to allowing a licensed distiller, domestic brewery, microbrewery, or domestic winery to sell liquor at a spirits, beer, and wine restaurant located on contiguous property that is leased by that licensed distiller, domestic brewery, microbrewery, or domestic winery; and amending RCW 66.28.010.

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

**Sec. 1.** RCW 66.28.010 and 2000 c 177 s 1 are each amended to read as follows:

(1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or

institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business



which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

Passed the Senate February 14, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 110

[Senate Bill 6628]

### CAMPUS POLICE—PROBATIONARY PERIOD

AN ACT Relating to probationary periods of campus police officer appointees; and amending RCW 41.06.150.

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

**Sec. 1.** RCW 41.06.150 and 1999 c 297 s 3 are each amended to read as follows:

The board shall adopt rules, consistent with the purposes and provisions of this chapter, as now or hereafter amended, and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) The reduction, dismissal, suspension, or demotion of an employee;

(2) Certification of names for vacancies, including departmental promotions, with the number of names equal to six more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists: **PROVIDED**, That when other applicants have scores equal to the lowest score among the names certified, their names shall also be certified;

(3) Examinations for all positions in the competitive and noncompetitive service;

(4) Appointments;

(5) Training and career development;

(6) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except ~~((that entry level state park rangers shall serve a probationary period of twelve months))~~ as follows:

(a) Entry level state park rangers shall serve a probationary period of twelve months;

(b) The probationary period of campus police officer appointees who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required. The board shall adopt rules to ensure that employees promoting to campus police officer who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall have the trial service period extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required;

(7) Transfers;

(8) Sick leaves and vacations;

(9) Hours of work;

(10) Layoffs when necessary and subsequent reemployment, both according to seniority;

(11) Determination of appropriate bargaining units within any agency: PROVIDED, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees;

(12) Certification and decertification of exclusive bargaining representatives: PROVIDED, That after certification of an exclusive bargaining representative and upon the representative's request, the director shall hold an election among employees in a bargaining unit to determine by a majority whether to require as a condition of employment membership in the certified exclusive bargaining representative on or after the thirtieth day following the beginning of employment or the date of such election, whichever is the later, and the failure of an employee to comply with such a condition of employment constitutes cause for dismissal: PROVIDED FURTHER, That no more often than once in each twelve-month period after expiration of twelve months following the date of the original election in a bargaining unit and upon petition of thirty percent of the members of a bargaining unit the director shall hold an election to determine whether a majority wish to rescind such condition of employment: PROVIDED FURTHER, That for purposes of this clause, membership in the certified exclusive bargaining

representative is satisfied by the payment of monthly or other periodic dues and does not require payment of initiation, reinstatement, or any other fees or fines and includes full and complete membership rights: AND PROVIDED FURTHER, That in order to safeguard the right of nonassociation of public employees, based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member, such public employee shall pay to the union, for purposes within the program of the union as designated by such employee that would be in harmony with his or her individual conscience, an amount of money equivalent to regular union dues minus any included monthly premiums for union-sponsored insurance programs, and such employee shall not be a member of the union but is entitled to all the representation rights of a union member;

(13) Agreements between agencies and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion;

(14) Written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization: PROVIDED, That nothing contained herein permits or grants to any employee the right to strike or refuse to perform his or her official duties;

(15) Adoption and revision of a comprehensive classification plan for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position.

(a) The board shall not adopt job classification revisions or class studies unless implementation of the proposed revision or study will result in net cost savings, increased efficiencies, or improved management of personnel or services, and the proposed revision or study has been approved by the director of financial management in accordance with chapter 43.88 RCW.

(b) Beginning July 1, 1995, through June 30, 1997, in addition to the requirements of (a) of this subsection:

(i) The board may approve the implementation of salary increases resulting from adjustments to the classification plan during the 1995-97 fiscal biennium only if:

(A) The implementation will not result in additional net costs and the proposed implementation has been approved by the director of financial management in accordance with chapter 43.88 RCW;

(B) The implementation will take effect on July 1, 1996, and the total net cost of all such actions approved by the board for implementation during the 1995-97 fiscal biennium does not exceed the amounts specified by the legislature specifically for this purpose; or

(C) The implementation is a result of emergent conditions. Emergent conditions are defined as emergency situations requiring the establishment of

positions necessary for the preservation of the public health, safety, or general welfare, which do not exceed \$250,000 of the moneys identified in section 718(2), chapter 18, Laws of 1995 2nd sp. sess.

(ii) The board shall approve only those salary increases resulting from adjustments to the classification plan if they are due to documented recruitment and retention difficulties, salary compression or inversion, increased duties and responsibilities, or inequities. For these purposes, inequities are defined as similar work assigned to different job classes with a salary disparity greater than 7.5 percent.

(iii) Adjustments made to the higher education hospital special pay plan are exempt from (b)(i) through (ii) of this subsection.

(c) Reclassifications, class studies, and salary adjustments to be implemented during the 1997-99 and subsequent fiscal biennia are governed by (a) of this subsection and RCW 41.06.152;

(16) Allocation and reallocation of positions within the classification plan;

(17) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units but the rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and that, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located, such adoption and revision subject to approval by the director of financial management in accordance with the provisions of chapter 43.88 RCW;

(18) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service;

(19) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(20) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the board, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is

discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given: PROVIDED, HOWEVER, That the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service: PROVIDED FURTHER, That for the purposes of this section "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month;

(21) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the board may not authorize such delegation to any position lower than the head of a major subdivision of the agency;

(22) Assuring persons who are or have been employed in classified positions before July 1, 1993, will be eligible for employment, reemployment, transfer, and promotion in respect to classified positions covered by this chapter;

(23) Affirmative action in appointment, promotion, transfer, recruitment, training, and career development; development and implementation of affirmative action goals and timetables; and monitoring of progress against those goals and timetables.

The board shall consult with the human rights commission in the development of rules pertaining to affirmative action. The department of personnel shall transmit a report annually to the human rights commission which states the progress each state agency has made in meeting affirmative action goals and timetables.

Passed the Senate February 16, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

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## CHAPTER 111

[Senate Bill 6652]

### COSMETOLOGISTS, BARBERS, MANICURISTS, AND ESTHETICIANS

AN ACT Relating to cosmetology, barbering, manicuring, and esthetics; amending RCW 18.16.010, 18.16.020, 18.16.030, 18.16.060, 18.16.090, 18.16.100, 18.16.110, 18.16.140, 18.16.170, 18.16.175, 18.16.200, 18.16.210, 18.16.240, and 18.16.900; reenacting and amending RCW 18.16.050; adding new sections to chapter 18.16 RCW; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 18.16.010 and 1984 c 208 s 1 are each amended to read as follows:

The legislature recognizes that the practices of cosmetology, barbering, manicuring, and esthetics involve((s)) the use of tools and chemicals which may be dangerous when mixed or applied improperly, and therefore finds it necessary in the interest of the public health, safety, and welfare to regulate ((the)) those practices ((of cosmetology)) in this state.

**Sec. 2.** RCW 18.16.020 and 1991 c 324 s 1 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Department" means the department of licensing.

(2) "Board" means the cosmetology, barbering, esthetics, and manicuring advisory board.

((2)) (3) "Director" means the director of the department of licensing or the director's designee.

((3)) (4) "The practice of cosmetology" means ((the practice of)) arranging, dressing, cutting, trimming, styling, shampooing, permanent waving, chemical relaxing ((or)), straightening, curling, bleaching, ((or)) lightening, coloring, waxing, tweezing, shaving, and mustache and beard design of the hair of the face, neck, and scalp ((and)); temporary removal of superfluous hair by use of depilatories, waxing, or tweezing; manicuring and pedicuring, limited to cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and nails of the hands and feet, excluding the application and removal of sculptured or otherwise artificial nails; esthetics limited to toning the skin of the scalp, stimulating the skin of the body by the use of preparations, tonics, lotions, or creams; and tinting eyelashes and eyebrows.

((4)) (5) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology ((and who has completed sixteen hundred hours of instruction at a school licensed under this chapter)).

((5)) (6) "The practice of barbering" means the cutting, trimming, arranging, dressing, curling, ((waving and)) shampooing, shaving, and mustache and beard design of the hair of the face, neck, and scalp.

((6)) (7) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

((7)) (8) "Practice of manicuring" means the cleaning, shaping, ((or)) polishing ((of)), decorating, and caring for and treatment of the cuticles and the nails of the hands or feet, and the application and removal of sculptured or otherwise artificial nails by hand or with mechanical or electrical apparatus or appliances.

((8)) (9) "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

~~((9))~~ (10) "Practice of esthetics" means ~~((skin care of the face, neck, and hands involving hot compresses, massage, or the use of approved electrical appliances or nonabrasive chemical compounds formulated for professional application only, and))~~ care of the skin by application and use of preparations, antiseptics, tonics, essential oils, or exfoliants, or by any device or equipment, electrical or otherwise, or by wraps, compresses, cleansing, conditioning, stimulation, pore extraction, or product application and removal; the temporary removal of superfluous hair by means of lotions, creams, ((or)) mechanical or electrical apparatus ((or)), appliance, waxing, tweezing, or depilatories; tinting of eyelashes and eyebrows; and lightening the hair, except the scalp, on another person.

~~((10))~~ (11) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

~~((11))~~ (12) "Instructor-trainee" means a person who is currently licensed in this state as a cosmetologist, barber, manicurist, or esthetician, and is enrolled in an ~~((approved instructor-trainee program))~~ instructor-trainee curriculum in a school licensed under this chapter.

~~((12))~~ (13) "School" means any establishment ~~((offering))~~ that offers curriculum of instruction in the practice of cosmetology, ((or)) barbering, ((or)) esthetics, ((or)) manicuring, or instructor-trainee to students and is licensed under this chapter.

~~((13))~~ (14) "Student" means a person sixteen years of age or older who is enrolled in a school licensed under this chapter and receives ~~((any phase))~~ instruction in any of the curricula of cosmetology, barbering, esthetics ~~((or)),~~ manicuring ~~((instruction)),~~ or instructor-training with or without tuition, fee, or cost, and who does not receive any wage or commission.

~~((14))~~ ~~"Instructor-operator-cosmetology")~~ (15) "Instructor" means a person who gives instruction in ~~((the practice of cosmetology and instructor-training in a school and who has the same qualifications as a cosmetologist;))~~ a school in a curriculum in which he or she holds a license under this chapter, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed ~~((an))~~ a licensing examination ~~((prepared or selected by the board and))~~ approved or administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution ~~((and who is otherwise qualified))~~ shall upon application be licensed as an ~~((instructor-operator with a cosmetology endorsement))~~ instructor to give instruction in a school in a curriculum in which he or she holds a license under this chapter. An applicant who holds an instructional credential from an accredited community or technical college and who has passed a licensing examination approved or administered by the director shall upon application be licensed as an instructor to give instruction in a school in a curriculum in which he or she holds a license under this chapter.

~~((15))~~ "Instructor-operator-barber" means a person who gives instruction in the practice of barbering and instructor training in a school, has the same qualifications as a barber, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a barber endorsement.

— ~~(16)~~ "Instructor-operator-manicure" means a person who gives instruction in the practice of manicuring and instructor training in a school, has the same qualifications as a manicurist, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a manicurist endorsement.

— ~~(17)~~ "Instructor-operator-esthetics" means a person who gives instruction in the practice of esthetics and instructor training in a school, has the same qualifications as an esthetician, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with an esthetics endorsement.

— ~~(18)~~ "Vocational student" is a person who in cooperation with any senior high, vocational technical institute, community college, or prep school, attends a cosmetology school and participates in its student course of instruction and has the same rights and duties as a student as defined in this chapter. The person must have academically completed the eleventh grade of high school. Every such vocational student shall receive credit for all creditable hours of the approved course of instruction received in the school of cosmetology upon graduation from high school. Hours shall be credited to a vocational student if the student graduates from an accredited high school or receives a certificate of educational competence.

— ~~(19)~~ "Booth renter" means a person who performs cosmetology, barbering, esthetics, or manicuring services where the use of the salon/shop facilities is contingent upon compensation to the owner of the salon/shop facilities and the person receives no compensation or other consideration from the owner for the services performed.

— ~~(20))~~ ~~(16)~~ "Person" means any individual, partnership, professional service corporation, joint stock association, joint venture, or any other entity authorized to do business in this state.

~~((21))~~ ~~(17)~~ "Salon/shop" means any building, structure, ~~((or motor home))~~ or any part thereof, other than a school, where the commercial practice of



cosmetology, barbering, esthetics, or manicuring is conducted; provided that any person, except employees of a salon/shop, who operates from a salon/shop is required to meet all salon/shop licensing requirements.

~~((22))~~ (18) "Crossover training" means training approved by the director as training hours that may be credited to current licensees for similar training received in another profession licensed under this chapter.

~~((23))~~ (19) "Approved security" means surety bond~~((, savings assignment, or irrevocable letter of credit)).~~

~~((24))~~ "Mobile operator" means any person possessing a valid cosmetology, barbering, manicuring, or esthetician's license that provides services in a mobile salon/shop:

~~—((25))~~ (20) "Personal services ~~((operator))~~" means ~~((any person possessing a valid))~~ a location licensed under this chapter where the practice of cosmetology, barbering, manicuring, or ~~((esthetician's license that provides services))~~ esthetics is performed for clients in the client's home, office, or other location that is convenient for the client.

(21) "Individual license" means a cosmetology, barber, manicurist, esthetician, or instructor license issued under this chapter.

(22) "Location license" means a license issued under this chapter for a salon/shop, school, personal services, or mobile unit.

(23) "Mobile unit" is a location license under this chapter where the practice of cosmetology, barbering, esthetics, or manicuring is conducted in a mobile structure. Mobile units must conform to the health and safety standards set by rule under this chapter.

(24) "Curriculum" means the courses of study taught at a school, set by rule under this chapter, and approved by the department. After consulting with the board, the director may set by rule a percentage of hours in a curriculum, up to a maximum of ten percent that could include hours a student receives while training in a salon/shop under a contract approved by the department. Each curriculum must include at least the following required hours:

- (a) Cosmetologist, one thousand six hundred hours;
- (b) Barber, one thousand hours;
- (c) Manicurist, six hundred hours;
- (d) Esthetician, six hundred hours;
- (e) Instructor-trainee, five hundred hours.

(25) "Student monthly report" means the student record of daily activities and the number of hours completed in each course of a curriculum that is prepared monthly by the school and provided to the student, audited annually by the department, and kept on file by the school for three years.

**Sec. 3.** RCW 18.16.030 and 1991 c 324 s 2 are each amended to read as follows:

In addition to any other duties imposed by law, the director shall have the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) To investigate alleged violations of this chapter and consumer complaints involving the practice under this chapter of cosmetology, barbering, esthetics, ~~((or)) manicuring, or instructing, and~~ schools offering ~~((training))~~ course curricula in these ~~((areas))~~ practices, and salons/shops ~~((and booth renters offering)),~~ personal services, or mobile units where these ((services)) practices are conducted;

(4) To issue subpoenas, statements of charges, statements of intent, final orders, stipulated agreements, and any other legal remedies necessary to enforce this chapter;

(5) To issue cease and desist ~~((letters))~~ orders and ~~((letters of warning))~~ notices of correction for infractions of this chapter;

(6) To conduct all disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it;

(7) To prepare and administer or approve the preparation and administration of licensing examinations;

(8) To establish minimum safety and sanitation standards for schools, instructors, cosmetologists, barbers, manicurists, estheticians, ~~((and))~~ salons/shops, personal services, and mobile units;

(9) To establish ~~((minimum instruction guidelines))~~ curricula for the training of students under this chapter;

(10) To maintain the official department record of applicants and licensees;

(11) To delegate in writing to a designee the authority to issue subpoenas, statements of charges, cease and desist orders, and any other documents necessary to enforce this chapter;

(12) To establish by rule the procedures for an appeal of an examination failure;

(13) To employ such administrative, investigative, inspection, audit, and clerical staff as needed to implement this chapter;

(14) To set license expiration dates and renewal periods for all licenses consistent with this chapter; and

(15) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter.

**Sec. 4.** RCW 18.16.050 and 1998 c 245 s 5 and 1998 c 20 s 1 are each reenacted and amended to read as follows:

(1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of nine members appointed by the director. These members of the board shall include: A representative of ~~((a))~~ private ~~((cosmetology))~~ schools licensed under this chapter; a representative of ~~((a))~~ public vocational technical schools ~~((involved in cosmetology training))~~ licensed under this chapter; a consumer who is unaffiliated with the cosmetology, barbering, esthetics, or manicuring industry; and six members who are currently practicing

licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. Members shall serve a term of three years. Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term.

(2) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

(3) The board may seek the advice and input of officials from the following state agencies: (a) The work force training and education coordinating board; (b) the department of employment security; (c) the department of labor and industries; (d) the department of health; (e) the department of licensing; and (f) the department of revenue.

**Sec. 5.** RCW 18.16.060 and 1991 c 324 s 4 are each amended to read as follows:

(1) The director shall impose a fine of one thousand dollars on any person who ~~((does)),~~ after a hearing provided for in RCW 18.16.210, has been found to have done any of the following without first obtaining the license required by this chapter:

(a) Except as provided in subsection (2) of this section, commercial practice of cosmetology, barbering, esthetics, manicuring, or instructing;

(b) Instructs in a school;

(c) Operates a school; or

(d) Operates a salon/shop, personal services, or mobile unit. ~~((Each booth renter shall be considered to be operating an independent salon/shop and shall obtain a separate salon/shop license.))~~

(2) A person who receives a license ~~((d))~~ as ~~((a cosmetology instructor-operator))~~ an instructor may engage in the commercial practice ~~((of cosmetology))~~ for which he or she held a license when applying for the instructor license without ~~((maintaining a cosmetologist))~~ renewing the previously held license. ~~((A person licensed as a barbering instructor-operator may engage in the commercial practice of barbering without maintaining a barber license. A person licensed as a manicuring instructor-operator may engage in the commercial practice of manicuring without maintaining a manicurist license. A person licensed as an esthetician instructor-operator may engage in the commercial practice of esthetics without maintaining an esthetician license.))~~ A person whose license is not or at any time was not renewed cannot engage in the commercial practice previously permitted under that license unless that person renews the previously held license.

**Sec. 6.** RCW 18.16.090 and 1991 c 324 s 5 are each amended to read as follows:

Examinations for licensure under this chapter shall be conducted ~~((monthly))~~ at such times and places as the director determines appropriate. Examinations shall consist of tests designed to reasonably measure the applicant's knowledge of safe

and sanitary practices and may also include the applicant's knowledge of this chapter and rules adopted pursuant to this chapter. The director may establish by rule a performance examination in addition to any other examination. The director shall establish by rule the minimum passing score for all examinations and the requirements for reexamination of applicants who fail the examination or examinations. The director may allow an independent person to conduct the examinations at the expense of the applicants.

The director shall take steps to ensure that after completion of the required course, applicants may promptly take the examination and receive the results of the examination.

**Sec. 7.** RCW 18.16.100 and 1991 c 324 s 6 are each amended to read as follows:

(1) Upon completion of an application approved by the department and payment of the proper fee, the director shall issue the appropriate license to any person who:

(a) Is at least seventeen years of age or older;

(b) Has completed and graduated from a ~~((course))~~ school licensed under this chapter in a curriculum approved by the director of sixteen hundred hours of training in cosmetology, one thousand hours of training in barbering, ~~((five))~~ six hundred hours of training in manicuring, ~~((five))~~ six hundred hours of training in esthetics, and/or five hundred hours of training as an instructor-trainee, or has met the requirements in RCW 18.16.020 or 18.16.130; and

(c) Has received a passing grade on the appropriate licensing examination approved or administered by the director.

(2) A person currently licensed under this chapter may qualify for examination and licensure, after the required examination is passed, in another category if he or she has completed the crossover training course ~~((approved by the director))~~.

(3) Upon completion of an application approved by the department, certification of insurance, and payment of the proper fee, the director shall issue a ~~((salon/shop))~~ location license to the ~~((operator of a salon/shop if the salon/shop meets the other requirements of this chapter as demonstrated by information submitted by the operator))~~ applicant.

(4) The director may consult with the state board of health and the department of labor and industries in establishing training and examination requirements.

**Sec. 8.** RCW 18.16.110 and 1991 c 324 s 7 are each amended to read as follows:

(1) The director shall issue the appropriate license to any applicant who meets the requirements as outlined in this chapter.

(2) Failure to renew a license before its expiration date subjects the holder to a penalty fee and payment of each year's renewal fee, at the current rate ~~((up to a maximum of four years as established by the director in accordance with RCW 43.24.086))~~. A person whose license has not been renewed ~~((for four years))~~ within one year after its expiration date shall have the license canceled and shall

be required to submit an application, pay the license fee, meet current licensing requirements, and pass ~~((the))~~ any applicable examination or examinations, in addition to the other requirements of this chapter, before the license may be reinstated~~((: PROVIDED, That the director may waive this requirement for good cause shown. To renew a salon/shop license, the licensee shall provide proof of insurance as required by RCW 18.16.175(1)(h))).~~

~~((2))~~ (3) Upon request and payment of an additional fee to be established by rule by the director, the director shall issue a duplicate license to an applicant.

**Sec. 9.** RCW 18.16.140 and 1991 c 324 s 11 are each amended to read as follows:

(1) Any person wishing to operate a school shall, before opening such a school, pay the license fee and file with the director for approval a license application ~~((and fee))~~ containing the following information:

(a) The names and addresses of all owners, managers, and instructors;

(b) A copy of the school's curriculum satisfying the ~~((training guidelines))~~ curriculum requirements established by the director;

(c) A sample copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies that will be used or distributed by the school to students and the public;

(d) ~~((A description and floor plan of the school's physical equipment and facilities;~~

~~—(e))~~ A surety bond~~((: irrevocable letter of credit, or savings assignment))~~ in an amount not less than ten thousand dollars, or ten percent of the annual gross tuition collected by the school, whichever is greater. The approved security shall not exceed fifty thousand dollars and shall run to the state of Washington for the protection of unearned prepaid student tuition. The school shall attest to its gross tuition at least annually on forms provided by the department. When a new school license is being applied for, the applicant will estimate its annual gross tuition to establish a bond amount. This subsection shall not apply to community colleges and vocational technical schools.

Upon approval of the application and documents, the director shall issue a license to operate a school ~~((with the appropriate certification or certifications)).~~

(2) Changes to the information provided by schools shall be submitted to the department within fifteen days of the implementation date.

(3) A change involving the controlling interest of the school requires a new license application and fee. The new application shall include all required documentation, proof of ownership change, and be approved prior to a license being issued.

(4) School and instructor licenses issued by the department shall be posted in the reception area of the school.

**Sec. 10.** RCW 18.16.170 and 1991 c 324 s 9 are each amended to read as follows:

(1) Subject to subsection (2) of this section, licenses issued under this chapter expire as follows:

(a) A salon/shop, personal services, or mobile unit license expires one year from issuance or when the insurance required by RCW 18.16.175(1)(~~(h)~~) (g) expires, whichever occurs first;

(b) A school license expires one year from issuance; and

(c) Cosmetologist, barber, manicurist, esthetician, and instructor licenses expire two years from issuance.

(2) The director may provide for expiration dates other than those set forth in subsection (1) of this section for the purpose of establishing staggered renewal periods.

**Sec. 11.** RCW 18.16.175 and 1997 c 178 s 2 are each amended to read as follows:

(1) A salon/shop or mobile unit shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop or mobile unit;

(c) ~~((Be operated under the direct supervision of a licensed cosmetologist except that a salon/shop that is limited to barbering may be directly supervised by a barber, a salon/shop that is limited to manicuring may be directly supervised by a manicurist, and a salon/shop that is limited to esthetics may be directly supervised by an esthetician;~~

~~—(d))~~ Any room used wholly or in part as a salon/shop or mobile unit shall not be used for residential purposes, except that toilet facilities may be used jointly for residential and business purposes;

~~((e))~~ (d) Meet the zoning requirements of the county, city, or town, as appropriate;

~~((f))~~ (e) Provide for safe storage and labeling of chemicals used in the practices ~~((of cosmetology))~~ under this chapter;

~~((g))~~ (f) Meet all applicable local and state fire codes; and

~~((h) Provide proof)~~ (g) Certify that the salon/shop or mobile unit is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability~~((; and))~~.

~~((i) Other requirements which)~~ (2) The director may by rule determine~~((s))~~ other requirements that are necessary for safety and sanitation of salons/shops, personal services, or mobile units. The director may consult with the state board of health and the department of labor and industries in establishing minimum salon/shop, personal services, and mobile unit safety requirements.

~~((2) A salon/shop shall post the notice to customers described in RCW 18.16.180;))~~

(3) Personal services license holders shall certify coverage of a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

(4) Upon receipt of a written complaint that a salon/shop or mobile unit has violated any provisions of this chapter or the rules adopted under this chapter or at least once every two years for an existing salon/shop or mobile unit, the director or the director's designee shall inspect each salon/shop or mobile unit. If the director determines that any salon/shop or mobile unit is not in compliance with this chapter, the director shall send written notice to the salon/shop or mobile unit. A salon/shop or mobile unit which fails to correct the conditions to the satisfaction of the director within a reasonable time shall, upon due notice, be subject to the penalties imposed by the director under RCW 18.16.210. The director may enter any salon/shop or mobile unit during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

~~((4))~~ (5) A salon/shop, ~~((including a salon/shop operated by a booth renter,))~~ personal services, or mobile unit shall obtain a certificate of registration from the department of revenue.

~~((5))~~ (6) This section does not prohibit the use of motor homes as mobile ~~((salon/shops))~~ units if the motor home meets the health and safety standards of this section.

(7) Salon/shop or mobile unit licenses issued by the department must be posted in the salon/shop or mobile unit's reception area.

(8) Cosmetology, barbering, esthetics, and manicuring licenses issued by the department must be posted at the licensed person's work station.

**Sec. 12.** RCW 18.16.200 and 1991 c 324 s 14 are each amended to read as follows:

Any applicant or licensee under this chapter may be subject to disciplinary action by the director if the licensee or applicant:

(1) Has been found guilty of a crime ~~((related to the practice of cosmetology, barbering, esthetics, manicuring, or instructing))~~ within the prior ten years involving moral turpitude or has been found to have violated any provision of chapter 19.86 RCW;

(2) Has made a material misstatement or omission in connection with an original application or renewal;

(3) Has engaged in false or misleading advertising;

(4) Has performed services in an unsafe or unsanitary manner;

(5) Has aided and abetted unlicensed activity;

(6) Has engaged in the commercial practice of cosmetology, barbering, manicuring, or esthetics, or has instructed in or operated a school, salon/shop, personal services, or mobile unit, without first obtaining the license required by this chapter;

(7) Has engaged in the commercial practice of cosmetology, barbering, manicuring, or esthetics in a school;

(8) Has not provided a safe, sanitary, and good moral environment for students and public;

(9) Has not provided records as required by this chapter;

(10) Has not cooperated with the department in supplying records or assisting in an inspection, investigation, or disciplinary procedure; ~~((or))~~

(11) Failed to display licenses required in this chapter; or

(12) Has violated any provision of this chapter or any rule adopted under it.

**Sec. 13.** RCW 18.16.210 and 1984 c 208 s 14 are each amended to read as follows:

If, following a hearing, the director finds that any person or an applicant or licensee has violated any provision of this chapter or any rule adopted under it, the director may impose one or more of the following penalties:

(1) Denial of a license or renewal;

(2) Revocation or suspension of a license;

(3) A fine of not more than five hundred dollars per violation;

(4) Issuance of a reprimand or letter of censure;

(5) Placement of the licensee on probation for a fixed period of time;

(6) Restriction of the licensee's authorized scope of practice;

(7) Requiring the licensee to make restitution or a refund as determined by the director to any individual injured by the violation; or

(8) Requiring the licensee to obtain additional training or instruction.

**NEW SECTION. Sec. 14.** A new section is added to chapter 18.16 RCW to read as follows:

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

**Sec. 15.** RCW 18.16.240 and 1997 c 58 s 815 are each amended to read as follows:

The department shall immediately suspend the license 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 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.

**NEW SECTION. Sec. 16.** A new section is added to chapter 18.16 RCW to read as follows:



(1) Prior to July 1, 2003, cosmetology licensees may request a license in manicuring and esthetics. A license renewal fee must be paid prior to issuance of each type of license requested. After June 30, 2003, any cosmetology licensee wishing to obtain additional licenses must meet the training and examination requirements of this chapter.

(2) Prior to July 1, 2003, students enrolled in a licensed school in an approved cosmetology curriculum may apply for the examination in cosmetology, manicuring, and esthetics. An examination fee must be paid for each examination selected. After June 30, 2003, students enrolled in a licensed school in an approved cosmetology curriculum may not apply for examination in manicuring and esthetics without meeting the training requirements of this chapter.

**Sec. 17.** RCW 18.16.900 and 1984 c 208 s 20 are each amended to read as follows:

This act shall be known and may be cited as the "Washington cosmetologists, barbers, (~~and~~) manicurists, and estheticians act".

**NEW SECTION. Sec. 18.** This act takes effect June 1, 2003.

Passed the Senate February 16, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 112

[Engrossed Senate Bill 6675]

### HEALTH CARE WORKERS—OVERTIME PROHIBITION

AN ACT Relating to prohibiting health care facilities from requiring employees to perform overtime work; adding new sections to chapter 49.28 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** Washington state is experiencing a critical shortage of qualified, competent health care workers. To safeguard the health, efficiency, and general well-being of health care workers and promote patient safety and quality of care, the legislature finds, as a matter of public policy, that required overtime work should be limited with reasonable safeguards in order to ensure that the public will continue to receive safe, quality care.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this section and sections 3 and 4 of this act unless the context clearly requires otherwise.

(1) "Employee" means a licensed practical nurse or a registered nurse licensed under chapter 18.79 RCW employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage.

(2) "Employer" means an individual, partnership, association, corporation, state institution, political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3) "Health care facility" means the following facilities, or any part of the facility, that operates on a twenty-four hours per day, seven days per week basis: 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, and psychiatric hospitals licensed under chapter 71.12 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state. If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7) "Unforeseeable emergent circumstance" means (a) any unforeseen declared national, state, or municipal emergency; (b) when a health care facility disaster plan is activated; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services.

**NEW SECTION. Sec. 3.** (1) No employee of a health care facility may be required to work overtime. Attempts to compel or force employees to work overtime are contrary to public policy, and any such requirement contained in a contract, agreement, or understanding is void.

(2) The acceptance by any employee of overtime is strictly voluntary, and the refusal of an employee to accept such overtime work is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

(3) This section does not apply to overtime work that occurs:

(a) Because of any unforeseeable emergent circumstance;

(b) Because of prescheduled on-call time;

(c) When the employer documents that the employer has used reasonable efforts to obtain staffing. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages; or

(d) When an employee is required to work overtime to complete a patient care procedure already in progress where the absence of the employee could have an adverse effect on the patient.

**NEW SECTION.** **Sec. 4.** The department of labor and industries shall investigate complaints of violations of section 3 of this act. A violation of section 3 of this act is a class 1 civil infraction in accordance with chapter 7.80 RCW, except that the maximum penalty is one thousand dollars for each infraction up to three infractions. If there are four or more violations of section 3 of this act for a health care facility, the employer is subject to a fine of two thousand five hundred dollars for the fourth violation, and five thousand dollars for each subsequent violation. The department of labor and industries is authorized to issue and enforce civil infractions according to chapter 7.80 RCW.

**NEW SECTION.** **Sec. 5.** Sections 2 through 4 of this act are each added to chapter 49.28 RCW.

Passed the Senate February 18, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 22, 2002.

Filed in Office of Secretary of State March 22, 2002.

## CHAPTER 113

[Substitute Senate Bill 6787]

### ORGAN PROCUREMENT ORGANIZATIONS—TAX EXEMPTION

AN ACT Relating to tax exemptions for organ procurement organizations; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to the sales of medical supplies, chemicals, or materials to an organ procurement organization exempt under section 1 of this act. The definitions of medical supplies, chemicals, and

materials in RCW 82.04.324 apply to this section. This exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to the use of medical supplies, chemicals, or materials by an organ procurement organization exempt under section 1 of this act. The definitions of medical supplies, chemicals, and materials in RCW 82.04.324 apply to this section. This exemption does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

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 February 15, 2002.
- Passed the House March 7, 2002.
- Approved by the Governor March 22, 2002.
- Filed in Office of Secretary of State March 22, 2002.

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**CHAPTER 114**

[Engrossed House Bill 2723]

**PUBLIC-PRIVATE TRANSPORTATION INITIATIVES**

AN ACT Relating to modifying the Public-Private Transportation Initiatives Act by authorizing state financing and administration of toll facilities; amending RCW 47.56.010, 47.46.030, 47.46.040, 47.46.050, 47.46.060, 47.56.030, 47.56.270, 47.56.271, 39.46.070, and 47.56.245; reenacting and amending RCW 43.84.092; adding new sections to chapter 47.46 RCW; and creating new sections.

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

NEW SECTION. **Sec. 1. INTENT.** The legislature finds that greater flexibility to provide state financing for projects developed under chapter 47.46 RCW will result in better use of public resources, lower financing costs, and potential savings to taxpayers. The legislature intends to: Clarify the ability of the department of transportation to use public and private financing for projects selected and developed under chapter 47.46 RCW; provide the department with specific means of state financing where that financing is in the public's best interest; provide citizens living in the impacted areas a statutory mechanism to review proposed toll rates and provide input before adoption of toll schedules by the toll authority; and prevent unreasonable delay of critical transportation projects that are essential for public safety and welfare.

**Sec. 2.** RCW 47.56.010 and 1984 c 7 s 246 are each amended to read as follows:

**PROVIDING DEFINITION FOR 1950 TACOMA NARROWS BRIDGE.**  
As used in this chapter:

(1) "Toll bridge" means a bridge constructed or acquired under this chapter, upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests used therefor, and buildings and improvements thereon.

(2) "Toll road" means any express highway, superhighway, or motorway at such locations and between such termini as may be established by law, and constructed or to be constructed as a limited access highway under the provisions of this chapter by the department, and shall include, but not be limited to, all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service facilities, communications facilities, and administration, storage, and other buildings that the department may deem necessary for the operation of the project, together with all property, rights, easements, and interests that may be acquired by the department for the construction or the operation of the project, all of which shall be conducted in the same manner and under the same procedure as provided for the establishing, constructing, operating, and maintaining of toll bridges by the department, insofar as those procedures are reasonably consistent and applicable.

(3) "1950 Tacoma Narrows bridge" means the bridge crossing the Tacoma Narrows that was opened to vehicle travel in 1950.

Sec. 3. RCW 47.46.030 and 1996 c 280 s 1 are each amended to read as follows:

DEMONSTRATION PROJECTS—SELECTION—PUBLIC INVOLVEMENT. (1) The secretary or a designee shall solicit proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the department and other public entities, all or a portion of the study, planning, design, construction, operation, and maintenance of transportation systems and facilities, using in whole or in part public or private sources of financing.

The public-private initiatives program may develop up to six demonstration projects. Each proposal shall be weighed on its own merits, and each of the six agreements shall be negotiated individually, and as a stand-alone project.

(2) If project proposals selected prior to September 1, 1994, are terminated by the public or private sectors, the department shall not select any new projects, including project proposals submitted to the department prior to September 1, 1994, and designated by the transportation commission as placeholder projects, after June 16, 1995, until June 30, 1997.

The department, in consultation with the legislative transportation committee, shall conduct a program and fiscal audit of the public-private initiatives program for the biennium ending June 30, 1997. The department shall submit a progress report to the legislative transportation committee on the program and fiscal audit by June 30, 1996, with preliminary and final audit reports due December 1, 1996, and June 30, 1997, respectively.

The department shall develop and submit a proposed public involvement plan to the 1997 legislature to identify the process for selecting new potential projects and the associated costs of implementing the plan. The legislature must adopt the public involvement plan before the department may proceed with any activity related to project identification and selection. Following legislative adoption of the public involvement plan, the department is authorized to implement the plan and to identify potential new projects.

The public involvement plan for projects selected after June 30, 1997, shall, at a minimum, identify projects that: (a) Have the potential of achieving overall public support among users of the projects, residents of communities in the vicinity of the projects, and residents of communities impacted by the projects; (b) meet a state transportation need; (c) provide a significant state benefit; and (d) provide competition among proposers and maximum cost benefits to users. Prospective projects may include projects identified by the department or submitted by the private sector.

Projects that meet the minimum criteria established under this section and the requirements of the public involvement plan developed by the department and approved by the legislature shall be submitted to the Washington state transportation commission for its review. The commission, in turn, shall submit a list of eligible projects to the legislative transportation committee for its consideration. Forty-five days after the submission to the legislative transportation committee of the list of eligible projects, the secretary is authorized to solicit proposals for the eligible project.

(3) Prior to entering into agreements with private entities under the requirements of RCW 47.46.040 for any project proposal selected before September 1, 1994, or after June 30, 1997, except as provided for in subsections ~~((11) and)~~ (12) and (13) of this section, the department shall require an advisory vote as provided under subsections (5) through (10) of this section.

(4) The advisory vote shall apply to project proposals selected prior to September 1, 1994, or after June 30, 1997, that receive public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project collected and submitted in accordance with the dates established in subsections (12) and (13) of this section. The advisory vote shall be on the preferred alternative identified under the requirements of chapter 43.21C RCW and, if applicable, the national environmental policy act, 42 U.S.C. 4321 et seq. The execution by the department of the advisory vote process established in this section is subject to the prior appropriation of funds by the legislature for the purpose of conducting environmental impact studies, a public involvement program, local involvement committee activities, traffic and economic impact analyses, engineering and technical studies, and the advisory vote.

(5) In preparing for the advisory vote, the department shall conduct a comprehensive analysis of traffic patterns and economic impact to define the

geographical boundary of the project area that is affected by the imposition of tolls or user fees authorized under this chapter. The area so defined is referred to in this section as the affected project area. In defining the affected project area, the department shall, at a minimum, undertake: (a) 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; (b) an analysis of the anticipated traffic diversion patterns; (c) 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; (d) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (e) an analysis of the relationship of the project to state transportation needs and benefits.

(6)(a) After determining the definition of the affected project area, the department shall establish a committee comprised of individuals who represent cities and counties in the affected project area; organizations formed to support or oppose the project; and users of the project. The committee shall be named the public-private local involvement committee, and be known as the local involvement committee.

(b) The members of the local involvement committee shall be: (i) An elected official from each city within the affected project area; (ii) an elected official from each county within the affected project area; (iii) two persons from each county within the affected project area who represent an organization formed in support of the project, if the organization exists; (iv) two persons from each county within the affected project area who represent an organization formed to oppose the project, if the organization exists; and (v) four public members active in a statewide transportation organization. If the committee makeup results in an even number of committee members, there shall be an additional appointment of an elected official from the county in which all, or the greatest portion of the project is located.

(c) City and county elected officials shall be appointed by a majority of the members of the city or county legislative authorities of each city or county within the affected project area, respectively. The county legislative authority of each county within the affected project area shall identify and validate organizations officially formed in support of or in opposition to the project and shall make the appointments required under this section from a list submitted by the chair of the organizations. Public members shall be appointed by the governor. All appointments to the local involvement committee shall be made and submitted to the department of transportation no later than January 1, 1996, for projects selected prior to September 1, 1994, and no later than thirty days after the affected project area is defined for projects selected after June 30, 1997. Vacancies in the membership of the local involvement committee shall be filled by the appointing

authority under (b)(i) through (v) of this subsection for each position on the committee.

(d) The local involvement committee shall serve in an advisory capacity to the department on all matters related to the execution of the advisory vote.

(e) Members of the local involvement committee serve without compensation and may not receive subsistence, lodging expenses, or travel expenses.

(7) The department shall conduct a minimum thirty-day public comment period on the definition of the geographical boundary of the project area. The department, in consultation with the local involvement committee, shall make adjustments, if required, to the definition of the geographical boundary of the affected project area, based on comments received from the public. Within fourteen calendar days after the public comment period, the department shall set the boundaries of the affected project area in units no smaller than a precinct as defined in RCW 29.01.120.

(8) The department, in consultation with the local involvement committee, shall develop a description for selected project proposals. After developing the description of the project proposal, the department shall publish the project proposal description in newspapers of general circulation for seven calendar days in the affected project area. Within fourteen calendar days after the last day of the publication of the project proposal description, the department shall transmit a copy of the map depicting the affected project area and the description of the project proposal to the county auditor of the county in which any portion of the affected project area is located.

(9) The department shall provide the legislative transportation committee with progress reports on the status of the definition of the affected project area and the description of the project proposal.

(10) Upon receipt of the map and the description of the project proposal, the county auditor shall, within thirty days, verify the precincts that are located within the affected project area. The county auditor shall prepare the text identifying and describing the affected project area and the project proposal using the definition of the geographical boundary of the affected project area and the project description submitted by the department and shall set an election date for the submission of a ballot proposition authorizing the imposition of tolls or user fees to implement the proposed project within the affected project area, which date may be the next succeeding general election to be held in the state, or at a special election, if requested by the department. The text of the project proposal must appear in a voter's pamphlet for the affected project area. The department shall pay the costs of publication and distribution. The special election date must be the next date for a special election provided under RCW 29.13.020 that is at least sixty days but, if authorized under RCW 29.13.020, no more than ninety days after the receipt of the final map and project description by the auditor. The department shall pay the cost of an election held under this section.



(11) Notwithstanding any other provision of law, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies, a public involvement program, and engineering and technical studies funded by the legislature. For projects subject to this subsection, the department shall not enter into an agreement under RCW 47.46.040 prior to the advisory vote on the preferred alternative.

(12) Subsections (5) through (10) of this section shall not apply to project proposals selected prior to September 1, 1994, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted after September 1, 1994, and by thirty calendar days after June 16, 1995.

(13) Subsections (5) through (10) of this section shall not apply to project proposals selected after June 30, 1997, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted by ninety calendar days after project selection.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 47.46 RCW to read as follows:

**USE OF STATE BONDS ON CERTAIN PROJECTS.** (1) To the extent that the legislature specifically appropriates funding for a project developed under this chapter using the proceeds of bonds issued by the state, an agreement for the design or construction of the project entered into by the secretary must incorporate provisions that are consistent with the use of the state financing provided by the appropriation.

(2) The secretary shall amend existing agreements or execute new agreements to comply with subsection (1) of this section.

(3) If the secretary is unable to reach agreement with other parties on contractual provisions providing for state financing, the secretary shall not enter into an agreement, or shall take no action with respect to an agreement, or shall exercise termination provisions, whichever option in the secretary's determination will result in the lowest net cost to the state.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 47.46 RCW to read as follows:

**STATE TOLL FACILITIES AUTHORIZED FOR PPI PROJECTS.** The department may provide for the establishment and construction of state toll bridge facilities upon any public highways of this state together with approaches to them under agreements entered into under this chapter to develop such facilities. A state toll bridge facility authorized under this section includes, but is not limited to, the construction of an additional toll bridge, including approaches, adjacent to and within two miles of an existing bridge, the imposition of tolls on both bridges, and the operation of both bridges as one toll facility.

NEW SECTION. **Sec. 6.** A new section is added to chapter 47.46 RCW to read as follows:

**CITIZEN ADVISORY COMMITTEE CREATED.** (1) A citizen advisory committee must be created for any project developed under this chapter that imposes toll charges for use of a transportation facility. The governor shall appoint nine members to the committee, all of whom must be permanent residents of the affected project area, as that term is used in RCW 47.46.030.

(2) The citizen advisory committee shall serve in an advisory capacity to the commission on all matters related to the imposition of tolls. Members of the committee shall serve without compensation.

(3) No toll charge may be imposed or modified unless the citizen advisory committee has been given at least twenty days to review and comment on any proposed toll charge schedule. In setting toll rates, the commission shall give consideration to any recommendations of the citizen advisory committee.

NEW SECTION. **Sec. 7.** A new section is added to chapter 47.46 RCW to read as follows:

**COMMISSION TO ESTABLISH TOLL CHARGES.** (1) The commission shall fix the rates of toll and other charges for all toll bridges built under this chapter that are financed primarily by bonds issued by the state. Subject to section 6 of this act, the commission may impose and modify toll charges from time to time as conditions warrant.

(2) In establishing toll charges, the commission shall give due consideration to any required costs for operating and maintaining the toll bridge or toll bridges, including the cost of insurance, and to any amount required by law to meet the redemption of bonds and interest payments on them.

(3) The toll charges must be imposed in amounts sufficient to:

(a) Provide annual revenue sufficient to provide for annual operating and maintenance expenses, except as provided in RCW 47.56.245;

(b) Make payments required under sections 11 and 12 of this act, including insurance costs and the payment of principal and interest on bonds issued for any particular toll bridge or toll bridges; and

(c) Repay the motor vehicle fund under sections 8, 11, and 12 of this act.

(4) The bond principal and interest payments, including repayment of the motor vehicle fund for amounts transferred from that fund to provide for such principal and interest payments, constitute a first direct and exclusive charge and lien on all tolls and other revenues from the toll bridge concerned, subject to operating and maintenance expenses.

NEW SECTION. **Sec. 8.** A new section is added to chapter 47.46 RCW to read as follows:

**TERM OF TOLLS.** (1) The commission shall retain toll charges on any existing and future facilities constructed under this chapter and financed primarily by bonds issued by the state until:

(a) All costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund have been fully repaid, except as provided in subsection (2)(b) of this section;

(b) Obligations incurred in constructing that facility have been fully paid; and

(c) The motor vehicle fund is fully repaid under section 12 of this act.

(2) This section does not:

(a) Prohibit the use of toll revenues to fund maintenance, operations, or management of facilities constructed under this chapter except as prohibited by RCW 47.56.245;

(b) Require repayment of funds specifically appropriated as a nonreimbursable state financial contribution to a project.

(3) Notwithstanding the provisions of subsection (2)(a) of this section, upon satisfaction of the conditions enumerated in subsection (1) of this section:

(a) The facility must be operated as a toll-free facility; and

(b) The operation, maintenance, upkeep, and repair of the facility must be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington.

**NEW SECTION. Sec. 9.** A new section is added to chapter 47.46 RCW to read as follows:

**TOLL INCREASES IN EXCESS OF FISCAL GROWTH FACTOR.**

Pursuant to RCW 43.135.055, the legislature authorizes the transportation commission to increase bridge tolls in excess of the fiscal growth factor.

**NEW SECTION. Sec. 10.** A new section is added to chapter 47.46 RCW to read as follows:

**USE OF STATE BOND PROCEEDS.** Proceeds of the sale of bonds issued by the state for projects constructed under this chapter must be deposited in the state treasury to the credit of a special account designated for those purposes. Those proceeds must be expended only for the purposes enumerated in this chapter, for payment of the expense incurred in the issuance and sale of any such bonds, and to repay the motor vehicle fund for any sums advanced to pay the cost of surveys, location, design, development, right-of-way, and other activities related to the financing and construction of the bridge and its approaches.

**NEW SECTION. Sec. 11.** **TACOMA NARROWS TOLL BRIDGE ACCOUNT CREATED.** A special account to be known as the Tacoma Narrows toll bridge account is created in the motor vehicle fund in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;

(b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly; and

(c) Any interest that may be earned from the deposit or investment of those revenues.

(2) Proceeds of bonds shall be used consistent with section 10 of this act, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements.

(3) Toll charges, other revenues, and interest may be used to:

(a) Pay any required costs of financing, operation, maintenance, and management and necessary repairs of the facility; and

(b) Repay amounts to the motor vehicle fund as required under section 12 of this act.

(4) When repaying the motor vehicle fund under section 12 of this act, the state treasurer shall transfer funds from the Tacoma Narrows toll bridge account to the motor vehicle fund on or before each debt service date for bonds issued for the Tacoma Narrows public-private initiative project in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues.

**NEW SECTION. Sec. 12.** A new section is added to chapter 47.46 RCW to read as follows:

**TOLL CHARGES REMAIN ON FACILITY TO REPAY MOTOR VEHICLE FUND.** Toll charges must be used to repay the motor vehicle fund consistent with section 11 of this act for any amounts transferred from the motor vehicle fund to the highway bond retirement fund under RCW 47.10.847 to provide for bond retirement and interest on bonds issued for the Tacoma Narrows public-private initiative project. Toll charges must remain on any facility financed by bonds issued by the state for a length of time necessary to repay the motor vehicle fund for any amounts expended from that fund for the design, development, right-of-way, financing, construction, maintenance, repair, or operation of the toll facility or for amounts transferred from the motor vehicle fund to the highway bond retirement fund under RCW 47.10.847 to provide for bond retirement and interest on bonds issued for the Tacoma Narrows public-private initiative project. Funds specifically appropriated as a nonreimbursable state financial contribution to the project do not require repayment.

**NEW SECTION. Sec. 13.** A new section is added to chapter 47.46 RCW to read as follows:

**ALTERATION DOES NOT CONSTITUTE NEW PROPOSAL.** If a proposal is or has been selected for the design, development, construction, maintenance, or operation of transportation systems or facilities under this chapter, subsequent agreements may be made to implement portions of the proposal that modify the proposal or that do not incorporate all the features of the proposal. Any such modified agreement does not require the solicitation or consideration of additional proposals for all or any portion of the services rendered under that modified agreement. Modified agreements may provide for the reimbursement of expenses and fees incurred under earlier agreements.

NEW SECTION. **Sec. 14.** A new section is added to chapter 47.46 RCW to read as follows:

**APPLICABLE RULES AND STATUTES.** All projects designed, constructed, and operated under this chapter 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.

NEW SECTION. **Sec. 15.** A new section is added to chapter 47.46 RCW to read as follows:

**APPLICATION OF RCW 47.46.040 AND 47.46.050.** RCW 47.46.040 and 47.46.050 apply only to those agreements that include private sources of financing in whole or in part.

**Sec. 16.** RCW 47.46.040 and 2001 c 64 s 14 are each amended to read as follows:

**DEMONSTRATION PROJECTS—TERMS OF AGREEMENTS—PUBLIC PARTICIPATION.** (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)))~~ (2) Agreements ~~((shall))~~ may 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))~~ may 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))~~ may lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

~~((4)))~~ (3) The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this ~~((chapter))~~ section. 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))~~ (4) 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))~~ (5) 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))~~ (6) 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))~~ (7) 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))~~ (8) Agreements entered into under this section shall include a process that provides for public involvement in decision making with respect to the development of the projects.

~~((10))~~ (9)(a) In carrying out the public involvement process required in subsection ~~((9))~~ (8) 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(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.

~~((H))~~ (10) 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.

**Sec. 17.** RCW 47.46.050 and 1995 2nd sp.s. c 19 s 4 are each amended to read as follows:

**FINANCIAL ARRANGEMENTS.** (1) The department may enter into agreements using federal, state, and local financing in connection with the projects, including without limitation, grants, loans, and other measures authorized by section 1012 of ISTEPA, and to do such things as necessary and desirable to maximize the funding and financing, including the formation of a revolving loan fund to implement this section.

(2) Agreements entered into under this section ~~((shall))~~ may authorize the private entity to lease the facilities within a designated area or areas from the state and to impose user fees or tolls within the designated area to allow a reasonable rate of return on investment, as established through a negotiated agreement between the state and the private entity. The negotiated agreement shall determine a maximum development fee and, where appropriate, a maximum rate of return on investment, based on project and financing characteristics. If the negotiated rate of return on investment or development fee is not affected, the private entity may establish and modify toll rates and user fees.

(3) Agreements that include a maximum rate of return may establish "incentive" rates of return beyond the negotiated maximum rate of return on investment. The incentive rates of return shall be designed to provide financial benefits to the affected public jurisdictions and the private entity, given the attainment of various safety, performance, or transportation demand management goals. The incentive rates of return shall be negotiated in the agreement.

(4) Agreements shall require that over the term of the ownership or lease the user fees or toll revenues be applied only to payment of ~~((the private entity's))~~:

(a) The capital outlay costs for the project, including ((project development costs, interest expense,)) the costs associated with planning, design, development, financing, construction, improvement, operations, toll collection, maintenance, and administration of the project~~((;))~~;

(b) The reimbursement to the state for all costs associated with an election as required under RCW 47.46.030, the costs of project review and oversight, and technical and law enforcement services~~((;))~~;



(c) The establishment of a fund to assure the adequacy of maintenance expenditures(;) and

(d) A reasonable return on investment to the private entity. A negotiated agreement shall not extend the term of the ownership or lease beyond the period of time required for payment of the private entity's capital outlay costs for the project under this subsection.

**Sec. 18.** RCW 47.46.060 and 1998 c 179 s 4 are each amended to read as follows:

**DEFERRAL OF TAXES.** (1) Any person, including the department of transportation and any private entity ((that is party to an agreement under this chapter)) or entities, may apply for deferral of taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment which will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project under this chapter. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the project. ~~((The use of the certificate shall be governed by rules established by the department of revenue.))~~

(3) The department of transportation or a private entity granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax. The project is operationally complete under this section when the collection of tolls is commenced for the state route number 16 improvements covered by the deferral.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the department of transportation or a private entity granted a deferral under this section.

(5) Interest shall not be charged on any taxes 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 for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the private entity. Transfer of ownership does not terminate the deferral.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

**Sec. 19.** RCW 47.56.030 and 2001 c 59 s 1 are each amended to read as follows:

**DEPARTMENT'S POWERS AND DUTIES REGARDING TOLL FACILITIES.** (1) Except as permitted under chapter 47.46 RCW:

(a) 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.

(b) 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.

(c) The department shall have full charge of design of all toll facilities.

(d) 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))~~ (d)(i) and ~~((b))~~ (ii) of this subsection:

~~((a))~~ (i) 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))~~ (ii) 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.

(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:

(i) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

(ii) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

(iii) Whether the proposer can perform the contract within the time specified;

(iv) The quality of performance of previous contracts or services;

(v) The previous and existing compliance by the proposer with laws relating to the contract or services;

(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

(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.

(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.

**Sec. 20.** RCW 47.56.270 and 1983 c 3 s 129 are each amended to read as follows:

**LAKE WASHINGTON AND 1950 TACOMA NARROWS BRIDGE MADE PART OF PRIMARY HIGHWAYS.** The Lake Washington bridge and the 1950 Tacoma Narrows bridge in chapter 47.17 RCW made a part of the primary state highways of the state of Washington, shall, upon completion, be operated, maintained, kept up, and repaired by the department in the manner provided in this chapter, and the cost of such operation, maintenance, upkeep, and repair shall be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington. This section does not apply to that portion of the Tacoma Narrows bridge facility first opened to traffic after the effective date of this act.

**Sec. 21.** RCW 47.56.271 and 1983 c 3 s 130 are each amended to read as follows:

**1950 TACOMA NARROWS BRIDGE TO REMAIN TOLL-FREE—EXCEPTION.** Except as otherwise provided in this section, the 1950 Tacoma Narrows bridge hereinbefore by the provisions of RCW 47.17.065 and 47.56.270 made a part of the primary state highways of the state shall be operated and maintained by the department as a toll-free facility at such time as the ~~((present))~~ bonded indebtedness relating ~~((thereto))~~ to the construction of the 1950 Tacoma Narrows bridge is wholly retired and tolls equaling the ~~((present))~~ indebtedness of the toll bridge authority incurred for the construction of the 1950 Tacoma Narrows bridge to the county of Pierce have been collected. ~~((It is the express intent of the legislature that the provisions of RCW 47.56.245 (section 47.56.245, chapter 13, Laws of 1961) shall not be applicable to the Tacoma Narrows bridge.))~~ Toll charges may be imposed upon the 1950 Tacoma Narrows bridge only if that bridge is included as part of a public toll bridge facility that includes an additional toll bridge adjacent to the 1950 Tacoma Narrows bridge and constructed under section 5 of this act.

**Sec. 22.** RCW 39.46.070 and 1983 c 167 s 7 are each amended to read as follows:

**BONDS—PAYMENT OF COSTS OF ISSUANCE AND SALE.** (1) Except as provided in subsection (2) of this section, the proceeds of any bonds issued by the state or a local government may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, establishing and funding reserve accounts and other accounts, an amount for working capital, capitalized interest for up to six months after completion of construction, necessary and related engineering, architectural, planning, and inspection costs, and other similar activities or purposes.

(2) In addition to the costs enumerated in subsection (1) of this section, costs authorized under this section include capitalized interest for up to seventy-two

months from the date of issuance for bonds issued by the state for the construction of a public toll bridge under chapter 47.46 RCW.

**Sec. 23.** RCW 47.56.245 and 1984 c 7 s 267 are each amended to read as follows:

**TOLL CHARGES RETAINED UNTIL COSTS PAID.** The department shall retain toll charges on all existing and future facilities until all costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945 have been fully paid.

(1) Except as provided in subsection (2) of this section, with respect to every facility completed after March 19, 1953, costs of maintenance~~(, management,)~~ and operation shall be paid periodically out of the revenues of the facility in which such costs were incurred.

(2) Where a state toll facility is constructed under chapter 47.46 RCW adjacent to or within two miles of an existing bridge that was constructed under this chapter, revenue from the toll facility may not be used to pay for costs of maintenance on the existing bridge.

**Sec. 24.** RCW 43.84.092 and 2001 2nd sp.s. c 14 s 608, 2001 c 273 s 6, 2001 c 141 s 3, and 2001 c 80 s 5 are each reenacted and 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 oyster reserve land 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 Tacoma Narrows toll bridge 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 fruit express account, 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. 25.** A new section is added to chapter 47.46 RCW to read as follows:

**LEGISLATIVE OVERSIGHT COMMITTEE.** A legislative oversight committee is established to monitor and report on the progress, execution, and efficiency of design-build contracts issued under this chapter. The legislative oversight committee will be comprised of one legislator from each caucus of each chamber of the legislature. The leadership of each caucus shall appoint one member from his or her respective caucus to serve on the legislative oversight committee authorized by this section.

**NEW SECTION. Sec. 26. CAPTIONS.** Captions used in this act do not constitute any part of the law.

Passed the House February 4, 2002.  
Passed the Senate March 13, 2002.  
Approved by the Governor March 22, 2002.  
Filed in Office of Secretary of State March 22, 2002.

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**CHAPTER 115**

[Engrossed Substitute Senate Bill 6412]

**INTERNATIONAL MATCHMAKING ORGANIZATIONS**

AN ACT Relating to international matchmaking organizations; amending RCW 43.43.760; adding a new chapter to Title 19 RCW; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The legislature intends to provide increased consumer awareness on the part of persons living abroad regarding Washington residents who utilize international matchmaking services for purposes of establishing relationships with those living abroad. The legislature recognizes that persons living abroad are already required to provide background information to the federal government during visa applications, but, unlike residents of the United States, are unlikely to have the means to access and fully verify personal history information about prospective spouses residing in the United States. The legislature does not intend to impede the ability of any person to establish a marital or romantic relationship, but rather to increase the ability of persons living abroad to make informed decisions about Washington residents.

The legislature does not intend to adversely impact in any way those businesses who offer international matchmaking services on a not for fee basis.

**NEW SECTION. Sec. 2.** (1) Each international matchmaking organization doing business in Washington state shall disseminate to a recruit, upon request, state background check information and marital history information relating to any Washington state resident about whom any information is provided to the recruit, in the recruit's native language. The organization shall notify all recruits that background check and marital history information is available upon request. The notice that background check and marital history information is available upon request shall be in the recruit's native language and shall be displayed in a manner that separates it from other information, is highly noticeable, and in lettering not less than one-quarter of an inch high.

(2) If an international matchmaking organization receives a request for information from a recruit pursuant to subsection (1) of this section, the organization shall notify the Washington state resident of the request. Upon receiving notification, the Washington state resident shall obtain from the state patrol and provide to the organization the complete transcript of any background check information provided pursuant to RCW 43.43.760 based on a submission of fingerprint impressions and provided pursuant to RCW 43.43.838 and shall provide to the organization his or her marital history information. The organization shall



require the resident to affirm that marital history information is complete and accurate, and includes any information regarding marriages, annulments, and dissolutions which occurred in other states or countries. The organization shall refrain from knowingly providing any further services to the recruit or the Washington state resident in regards to facilitating future interaction between the recruit and the Washington state resident until the organization has obtained the requested information and provided it to the recruit.

(3) This section does not apply to a traditional matchmaking organization of a religious nature that otherwise operates in compliance with the laws of the countries of the recruits of such organization and the laws of the United States nor to any organization that does not charge a fee to any party for the service provided.

(4) As used in this section:

(a) "International matchmaking organization" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and for profit offers to Washington state residents, including aliens lawfully admitted for permanent residence and residing in Washington state, dating, matrimonial, or social referral services involving citizens of a foreign country or countries who are not residing in the United States, by: (i) An exchange of names, telephone numbers, addresses, or statistics; (ii) selection of photographs; or (iii) a social environment provided by the organization in a country other than the United States.

(b) "Marital history information" means a declaration of the person's current marital status, the number of times the person has previously been married, and whether any previous marriages occurred as a result of receiving services from an international matchmaking organization.

(c) "Recruit" means a noncitizen, nonresident person, recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services.

**NEW SECTION.** **Sec. 3.** For purposes of establishing personal jurisdiction under this act, an international matchmaking organization is deemed to be doing business in Washington and therefore subject to specific jurisdiction if it contracts for matchmaking services with a Washington resident or if it is considered to be doing business under any other provision or rule of law.

**NEW SECTION.** **Sec. 4.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

**Sec. 5.** RCW 43.43.760 and 2001 c 217 s 3 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, or is an applicant for the services of an international matchmaking organization, 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, or international matchmaking organization 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.

(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.

**NEW SECTION. Sec. 6.** Sections 1 through 4 of this act constitute a new chapter in Title 19 RCW.

**NEW SECTION. Sec. 7.** This act takes effect September 1, 2002.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 116

[Substitute Senate Bill 6537]

### SEXUAL ASSAULT VICTIMS—EMERGENCY CARE

AN ACT Relating to emergency care for victims of sexual assault; amending RCW 70.41.020; adding new sections to chapter 70.41 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that:

(a) Each year, over three hundred thousand women are sexually assaulted in the United States;

(b) Nationally, over thirty-two thousand women become pregnant each year as a result of sexual assault. Approximately fifty percent of these pregnancies end in abortion;

(c) Approximately thirty-eight percent of women in Washington are sexually assaulted over the course of their lifetime. This is twenty percent more than the national average;

(d) Only fifteen percent of sexual assaults in Washington are reported; however, even the numbers of reported attacks are staggering. For example, last year, two thousand six hundred fifty-nine rapes were reported in Washington, this is more than seven rapes per day.

(2) The legislature deems it essential that all hospital emergency rooms provide emergency contraception as a treatment option to any woman who seeks treatment as a result of a sexual assault.

**Sec. 2.** RCW 70.41.020 and 1991 c 3 s 334 are each amended to read as follows:

Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Department" means the Washington state department of health((;)).

(2) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(3) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(4) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include ((maternity homes)) birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations((;)).

((;)) (5) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

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

(7) "Sexual assault" has the same meaning as in RCW 70.125.030.

(8) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient.

NEW SECTION. **Sec. 3.** A new section is added to chapter 70.41 RCW to read as follows:

(1) Every hospital providing emergency care to a victim of sexual assault shall:

(a) Provide the victim with medically and factually accurate and unbiased written and oral information about emergency contraception;

(b) Orally inform each victim of sexual assault of her option to be provided emergency contraception at the hospital; and

(c) If not medically contraindicated, provide emergency contraception immediately at the hospital to each victim of sexual assault who requests it.

(2) The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, shall develop, prepare, and produce informational materials relating to emergency contraception for the prevention of pregnancy in rape victims for distribution to and use in all emergency rooms in the state, in quantities sufficient to comply with the requirements of this section. The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, may also approve informational materials from other sources for the purposes of this section. The informational materials must be clearly written and readily comprehensible in a culturally competent manner, as the secretary, in collaboration with community sexual assault programs and other relevant stakeholders, deems necessary to inform victims of sexual assault. The materials must explain the nature of emergency contraception, including that it is effective in preventing pregnancy, treatment options, and where they can be obtained.

(3) The secretary shall adopt rules necessary to implement this section.

NEW SECTION. **Sec. 4.** A new section is added to chapter 70.41 RCW to read as follows:

The department must respond to complaints of violations of section 3 of this act. The department shall convene a task force, composed of representatives from community sexual assault programs and other relevant stakeholders including advocacy agencies, medical agencies, and hospital associations, to provide input into the development and evaluation of the education materials and rule development. The task force shall expire on January 1, 2004.

Passed the Senate February 16, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 117

[Engrossed House Bill 2655]

### PROTECTION ORDERS

AN ACT Relating to protection orders; amending RCW 10.14.040, 10.14.100, 10.14.125, and 26.50.125; and adding a new section to chapter 10.14 RCW.

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

**Sec. 1.** RCW 10.14.040 and 2001 c 260 s 3 are each amended to read as follows:

There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Filing fees are set in RCW 36.18.020, but no filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought or as provided in section 2 of this act. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) The parent or guardian of a child under age eighteen may petition for an order of protection to restrain a person age eighteen years or over from contact with that child upon a showing that contact with the person to be enjoined is detrimental to the welfare of the child.

(7) The parent or guardian of a child under the age of eighteen may petition in superior court for an order of protection to restrain a person under the age of eighteen years from contact with that child only in cases where the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under investigation or has been investigated for such an offense. In issuing a protection order under this subsection, the court shall consider, among the other facts of the case, the severity of the alleged offense, any continuing physical danger or emotional distress to the alleged victim, and the expense, difficulty, and educational disruption that would be caused by a transfer of the alleged offender to another school. The court may order that the person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen years protected by the order. In the event that the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends.

**NEW SECTION.** Sec. 2. A new section is added to chapter 10.14 RCW to read as follows:

No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter from a person who has stalked them as that term is defined in RCW 9A.46.110, or from a person who has engaged in conduct that would constitute a sex offense as defined in RCW 9A.44.130, or from a person who is a family or household member as defined in RCW 26.50.010(2) who has engaged in conduct that would constitute domestic violence as defined in RCW 26.50.010(1).

**Sec. 3.** RCW 10.14.100 and 2001 c 311 s 2 are each amended to read as follows:

(1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (5) and (7) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the court's satisfaction that the respondent has previously been personally served with the temporary order.

(6) Except in cases where the petitioner has fees waived under section 2 of this act or is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(7) If the court previously entered an order allowing service by publication of the notice of hearing and temporary order of protection pursuant to RCW 10.14.085, the court may permit service by publication of the order of protection issued under RCW 10.14.080. Service by publication must comply with the requirements of RCW 10.14.085.

**Sec. 4.** RCW 10.14.125 and 1992 c 143 s 18 are each amended to read as follows:

The court may permit service by publication under this chapter only if the petitioner pays the cost of publication or if the petitioner's costs have been waived pursuant to section 2 of this act, unless the county legislative authority allocates funds for service of process by publication for petitioners who are granted leave to proceed in forma pauperis.

**Sec. 5.** RCW 26.50.125 and 1995 c 246 s 17 are each amended to read as follows:

Except as provided in section 2 of this act, the court may permit service by publication or by mail under this chapter only if the petitioner pays the cost of publication or mailing unless the county legislative authority allocates funds for service of process by publication or by mail for indigent petitioners.

Passed the House March 12, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 118

[Substitute Senate Bill 6488]

### REGISTERED SEX OFFENDER WEB SITE

AN ACT Relating to a statewide registered sex offender web site; amending RCW 43.43.540; reenacting and amending RCW 4.24.550; and creating a new section.

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

**Sec. I.** RCW 4.24.550 and 2001 c 283 s 2 and 2001 c 169 s 2 are each reenacted and amended to read as follows:

(1) In addition to the disclosure under subsection (5) of this section, 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) Except for the information specifically required under subsection (5) of this section, 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) Except for the information specifically required under subsection (5) of this section, 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; (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) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources other than state funds, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered sex offender web site, which shall be available to the public. The web site shall post all level III registered sex offenders in the state of Washington. The web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) 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.

~~((6))~~ (7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 ~~((is)), or units of local government and its employees, as provided in RCW 36.28A.010, are~~ 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.

~~((7))~~ (8) 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.

~~((8))~~ (9) 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.

~~((9))~~ (10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the ~~((department of corrections,))~~ end of sentence review committee or the department of social and health services ~~((, or the indeterminate sentence review board))~~ at the time of the offender's release from confinement, the law enforcement agency or official shall notify the ~~((appropriate department or the board))~~ end of sentence review committee of the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs.

**Sec. 2.** RCW 43.43.540 and 1998 c 220 s 4 are each amended to read as follows:

The county sheriff shall (1) forward the information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including any notice of change of address, to the Washington state patrol within five working days; and (2) upon implementation of RCW 4.24.550(5)(a), forward any information obtained pursuant to RCW 9A.44.130 that is necessary to operate the registered sex offender web site described in RCW 4.24.550(5)(a) to the Washington association of sheriffs and police chiefs within five working days of receiving the information, including any notice of change of address or change in risk level notification. The state patrol shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the fingerprints and the photographs.

NEW SECTION. **Sec. 3.** If any provision of this act or its application to any person or circumstance is held invalid due to a conflict with federal law, the conflicting part of this act is inoperative solely to the extent of the conflict, and such holding does not affect the operation of the remainder of this act or the application of the provision to other persons or circumstances.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 119

[Senate Bill 6491]

### BACKGROUND CHECKS—LIQUOR CONTROL BOARD—GAMBLING COMMISSION

AN ACT Relating to meeting federal standards for criminal background checks for the liquor control board and the gambling commission; and amending RCW 9.46.070, 66.08.030, 66.24.010, and 66.24.025.

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

**Sec. 1.** RCW 9.46.070 and 1999 c 143 s 6 are each amended to read as follows:

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this

chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for

processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission (~~may~~) shall require fingerprinting and national criminal history background checks on any persons seeking licenses, certifications, or permits under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity. All national criminal history background checks shall be conducted using fingerprints submitted to the United States department of justice-federal bureau of investigation. The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks. In identifying these persons, the commission must take into consideration the nature, character, size, and scope of the gambling activities requested by the persons making such applications;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any

gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo. In establishing limitations pursuant to this subsection the commission shall take into account (i) the nature, character, and scope of the activities of the licensee; (ii) the source of all other income of the licensee; and (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation, or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0282;

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person

to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter; and

(20) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

**Sec. 2.** RCW 66.08.030 and 1977 ex.s. c 115 s 1 are each amended to read as follows:

(1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title, and the qualifications for receiving a permit or license issued under this title, including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;



(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: **PROVIDED**, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: **PROVIDED**, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages.

**Sec. 3.** RCW 66.24.010 and 1998 c 126 s 2 are each amended to read as follows:

(1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial,

suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant ~~((and))~~ including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board 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. 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 board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW

34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the county legislative authority, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official

or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or spirits, beer, and wine restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant assuming an existing retail or distributor license to continue the operation of the retail or distributor premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or distributor license within ninety days of the date of filing the application for a temporary license;

(b) The retail or distributor license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or distributor license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

**Sec. 4.** RCW 66.24.025 and 1995 c 232 s 2 are each amended to read as follows:

(1) If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party or parties to receive a liquor license, the liquor control board may require a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may

search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of stock ownership and/or corporate officers.

Passed the Senate February 16, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 120

[Second Substitute House Bill 2311]

### SMALL FOREST LANDOWNERS

AN ACT Relating to small forest landowners; amending RCW 76.13.110, 76.13.120, and 76.13.140; and adding a new section to chapter 76.09 RCW.

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

**Sec. 1.** RCW 76.13.110 and 2001 c 280 s 1 are each amended to read as follows:

(1) The department of natural resources shall establish and maintain a small forest landowner office. The small forest landowner office shall be a resource and focal point for small forest landowner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.

(2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120. ~~((With respect to that program, the office shall have the authority to contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest and fish regulatory requirements related to the forest riparian easement program.))~~

(3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in rules and a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the landowner's option, alternate

plans or alternate harvest restrictions may be used to further meet riparian functions.

The small forest landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.

(4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. The commissioner shall designate two of the initial small forest landowner appointees to serve five-year terms and the other two small forest landowner appointees to serve four-year terms. Thereafter, appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2002, the small forest landowner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2004, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends.

**Sec. 2.** RCW 76.13.120 and 2001 c 280 s 2 are each amended to read as follows:

(1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small (~~timber~~) harvester under RCW (~~(84.33.073(1))~~) 84.33.035; and



(iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW ((84.33.073(1))) 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW ((84.33.073(1))) 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources' reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition as of the date that the forest practices application is submitted or the date the landowner notifies the department that the harvest is to begin with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(d) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement

premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small forest landowner as provided for in this section. The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted or the date the landowner notifies the department that the harvest is to begin. ~~((If, under the forest practices rules adopted under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be removed prior to the expiration of the fifty-year term of the easement, the small forest landowner office shall apply a reduced compensation factor to ascertain the value of those trees based on the proportional economic value, considering income and growth, lost to the landowner))~~ Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. If the landowner accepts the offer for qualifying timber that will be harvested pursuant to an approved forest practices application, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i)

verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(9) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forest riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and

(i) A method for internal department of natural resources review of small forest landowner office compensation decisions under subsection (7) of this section.

**Sec. 3.** RCW 76.13.140 and 2001 c 280 s 3 are each amended to read as follows:

In order to assist small forest landowners to remain economically viable, the legislature intends that the small forest landowners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the riparian easement program. For purposes of this section, "compliance costs" includes the cost of preparing and recording the easement, and any business and occupation tax and real estate excise tax imposed because of entering into the easement. The office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest and fish regulatory requirements related to the forest riparian easement program. The department shall reimburse small forest landowners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forest landowner office shall determine how the reimbursement costs will be calculated.

**NEW SECTION. Sec. 4.** A new section is added to chapter 76.09 RCW to read as follows:

The legislature intends that small forest landowners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370(3), but which also lowers the overall cost of regulation to small forest landowners including, but not limited to, timber value forgone, layout costs, and operating costs. The forest practices board shall consult with the small forest landowner office advisory committee in developing these alternate approaches. By July 1, 2003, the forest practices board shall provide the legislature with a written report that describes the board's progress in developing alternate plan processes or alternate harvest restrictions, or both if necessary, that meet legislative intent.

As used in this section, "small forest landowner" has the same meaning as defined in RCW 76.13.120(2).

Passed the House February 14, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 121

[Engrossed House Bill 2399]

## FOREST PRACTICES

AN ACT Relating to Class IV forest practices in urbanizing areas; and amending RCW 76.09.050 and 76.09.240.

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

**Sec. 1.** RCW 76.09.050 and 1997 c 173 s 2 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

**Class I:** Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

**Class II:** Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW ((75.20.100)) 77.55.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

**Class III:** Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

**Class IV:** Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of

the likelihood of future conversion to urban development, (d) (~~except on those lands~~) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is

delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: **PROVIDED**, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: **PROVIDED, FURTHER**, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: **PROVIDED, FURTHER**, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

- (i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or
- (ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

**Sec. 2.** RCW 76.09.240 and 1997 c 173 s 5 are each amended to read as follows:

(1) By December 31, (~~2001~~) 2005, each county and each city shall adopt ordinances or promulgate regulations setting standards for those Class IV forest practices regulated by local government. The regulations shall: (a) Establish minimum standards for Class IV forest practices; (b) set forth necessary administrative provisions; and (c) establish procedures for the collection and administration of forest practices and recording fees as set forth in this chapter.

(2) Class IV forest practices regulations shall be administered and enforced by the counties and cities that promulgate them.



(3) The forest practices board shall continue to promulgate regulations and the department shall continue to administer and enforce the regulations promulgated by the board in each county and each city for all forest practices as provided in this chapter until such time as, in the opinion of the department, the county or city has promulgated forest practices regulations that meet the requirements as set forth in this section and that meet or exceed the standards set forth by the board in regulations in effect at the time the local regulations are adopted. Regulations promulgated by the county or city thereafter shall be reviewed in the usual manner set forth for county or city rules or ordinances. Amendments to local ordinances must meet or exceed the forest practices rules at the time the local ordinances are amended.

(a) Department review of the initial regulations promulgated by a county or city shall take place upon written request by the county or city. The department, in consultation with the department of ecology, may approve or disapprove the regulations in whole or in part.

(b) Until January 1, ((2002)) 2006, the department shall provide technical assistance to all counties or cities that have adopted forest practices regulations acceptable to the department and that have assumed regulatory authority over all Class IV forest practices within their jurisdiction.

(c) Decisions by the department approving or disapproving the initial regulations promulgated by a county or city may be appealed to the forest practices appeals board, which has exclusive jurisdiction to review the department's approval or disapproval of regulations promulgated by counties and cities.

(4) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: **PROVIDED**, That exercise of such authority may regulate forest practices only: (i) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands have been or will be converted to a use other than commercial forest product production; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW: **PROVIDED**, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971".

Passed the House January 28, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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**CHAPTER 122**

[House Bill 2809]

**FOREST PESTICIDE APPLICATION**

AN ACT Relating to forest pesticide application; amending RCW 17.21.020 and 17.21.020: 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 17.21.020 and 1994 c 283 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 commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Agricultural land" means land on which an agricultural commodity is produced or land that is in a government-recognized conservation reserve program. This definition does not apply to private gardens where agricultural commodities are produced for personal consumption.

(3) "Apparatus" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(4) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(5) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA or the director as a restricted use pesticide.

(6) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(7) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(8) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(9) "Department" means the Washington state department of agriculture.

(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(11) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(12) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision and shall require that the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during the application. However, direct supervision for forest application does not require constant voice and visual contact when general use pesticides are applied using nonapparatus type equipment, the certified applicator is physically present and readily available in the immediate application area, and the certified applicator directly observes pesticide mixing and batching. Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(13) "Director" means the director of the department or a duly authorized representative.

(14) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(15) "EPA" means the United States environmental protection agency.

(16) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(17) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(18) "Forest application" means the application of pesticides to agricultural land used to grow trees for the commercial production of wood or wood fiber for

products such as dimensional lumber, shakes, plywood, poles, posts, pilings, particle board, hardboard, oriented strand board, pulp, paper, cardboard, or other similar products.

~~(19)~~ (19) "Fumigant" means any pesticide product or combination of products that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

~~((19))~~ (20) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and yeasts, except those on or in a living person or other animals.

~~((20))~~ (21) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

~~((21))~~ (22) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant.

~~((22))~~ (23) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

~~((23))~~ (24) "Insect" means any small invertebrate animal, in any life stage, whose adult form is segmented and which generally belongs to the class insecta, comprised of six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies. The term insect shall also apply to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

~~((24))~~ (25) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect.

~~((25))~~ (26) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

~~((26))~~ (27) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((27))~~ (28) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

~~((28))~~ (29) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eelworms.

~~((29))~~ (30) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((30))~~ (31) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest.

~~((31))~~ (32) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used.

~~((32))~~ (33) "Pesticide advisory board" means the pesticide advisory board as provided for in this chapter.

~~((33))~~ (34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

~~((34))~~ (35) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

~~((35))~~ (36) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((36))~~ (37) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

~~((37))~~ (38) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires

additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

~~((38))~~ (39) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

~~((39))~~ (40) "Snails or slugs" include all harmful mollusks.

~~((40))~~ (41) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((41))~~ (42) "Weed" means any plant which grows where it is not wanted.

**Sec. 2.** RCW 17.21.020 and 2001 c 333 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 commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Agricultural land" means land on which an agricultural commodity is produced or land that is in a government-recognized conservation reserve program. This definition does not apply to private gardens where agricultural commodities are produced for personal consumption.

(3) "Antimicrobial pesticide" means a pesticide that is used for the control of microbial pests, including but not limited to viruses, bacteria, algae, and protozoa, and is intended for use as a disinfectant or sanitizer.

(4) "Apparatus" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(5) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(6) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator,

private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA or the director as a restricted use pesticide.

(7) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(8) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(10) "Department" means the Washington state department of agriculture.

(11) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(12) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(13) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision and shall require that the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during the application. However, direct supervision for forest application does not require constant voice and visual contact when general use pesticides are applied using nonapparatus type equipment, the certified applicator is physically present and readily available in the immediate application area, and the certified applicator directly observes pesticide mixing and batching. Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(14) "Director" means the director of the department or a duly authorized representative.

(15) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(16) "EPA" means the United States environmental protection agency.

(17) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(18) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(19) "Forest application" means the application of pesticides to agricultural land used to grow trees for the commercial production of wood or wood fiber for products such as dimensional lumber, shakes, plywood, poles, posts, pilings, particle board, hardboard, oriented strand board, pulp, paper, cardboard, or other similar products.

(20) "Fumigant" means any pesticide product or combination of products that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

~~((20))~~ (21) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and yeasts, except those on or in a living person or other animals.

~~((21))~~ (22) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

~~((22))~~ (23) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant.

~~((23))~~ (24) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

~~((24))~~ (25) "Insect" means any small invertebrate animal, in any life stage, whose adult form is segmented and which generally belongs to the class insecta, comprised of six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies. The term insect shall also apply to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

~~((25))~~ (26) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect.

~~((26))~~ (27) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

~~((27))~~ (28) "Landscape application" means an application of any EPA registered pesticide to any exterior landscape area around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((28))~~ (29) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.



~~((29))~~ (30) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eelworms.

~~((30))~~ (31) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((31))~~ (32) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest.

~~((32))~~ (33) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used.

~~((33))~~ (34) "Pesticide advisory board" means the pesticide advisory board as provided for in this chapter.

~~((34))~~ (35) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

~~((35))~~ (36) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

~~((36))~~ (37) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((37))~~ (38) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

~~((38))~~ (39) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

~~((39))~~ (40) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

~~((40))~~ (41) "School facility" means any facility used for licensed day care center purposes or for the purposes of a public kindergarten or public elementary or secondary school. School facility includes the buildings or structures, playgrounds, landscape areas, athletic fields, school vehicles, or any other area of school property.

~~((41))~~ (42) "Snails or slugs" include all harmful mollusks.

~~((42))~~ (43) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((43))~~ (44) "Weed" means any plant which grows where it is not wanted.

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

(2) Section 2 of this act takes effect July 1, 2002.

**NEW SECTION. Sec. 4.** Section 1 of this act expires July 1, 2002.

Passed the House February 14, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 123

[Engrossed Substitute House Bill 2819]

### SHELLFISH FARMING

AN ACT Relating to Bush act and Callow act lands; adding a new section to chapter 79.90 RCW; adding a new section to chapter 79.96 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature

also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled.

**NEW SECTION.** Sec. 2. A new section is added to chapter 79.90 RCW to read as follows:

(1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of this act, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts.

**NEW SECTION.** Sec. 3. A new section is added to chapter 79.96 RCW to read as follows:

Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys on anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the Washington coordinate system in compliance

with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey.

Passed the House February 18, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

**CHAPTER 124**

[House Bill 2407]

**REGIONAL JAILS**

AN ACT Relating to establishing the authority to create and operate regional jails; and adding a new section to chapter 70.48 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 70.48 RCW to read as follows:

(1) Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.

(2) A jurisdiction that confines persons prior to conviction in a regional jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

(3) The creation and operation of any regional jail must comply with the interlocal cooperation act described in chapter 39.34 RCW.

(4) Nothing in this section prevents counties and cities from contracting for jail services as described in RCW 70.48.090.

Passed the House March 9, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

**CHAPTER 125**

[Substitute House Bill 2541]

**JAIL SERVICES—INTERLOCAL AGREEMENTS**

AN ACT Relating to interlocal agreements for jail services; and amending RCW 70.48.090 and 70.48.220.

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

**Sec. 1.** RCW 70.48.090 and 1987 c 462 s 7 are each amended to read as follows:

(1) Contracts for jail services may be made between a county and a city (~~located within the boundaries of a county~~), and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the

operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the corrections standards board or office when it authorized disbursement of state funds for the remodeling or construction under RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(3) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein.

**Sec. 2.** RCW 70.48.220 and 1979 ex.s. c 232 s 19 are each amended to read as follows:

A person (~~(convicted of)~~) confined for an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services.

A jurisdiction that confines persons prior to conviction in a jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 126

[Substitute Senate Bill 6402]

## INMATE WAGES—DEDUCTIONS

AN ACT Relating to legal financial obligation deductions from inmate funds and wages; and amending RCW 72.11.020, 72.09.111, and 72.65.050.

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

**Sec. 1.** RCW 72.11.020 and 1989 c 252 s 23 are each amended to read as follows:

The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid.

**Sec. 2.** RCW 72.09.111 and 1999 c 325 s 2 are each amended to read as follows:

(1) The secretary shall deduct from the gross wages or gratuities of each inmate working in correctional industries work programs, taxes and legal financial obligations. The secretary shall develop a formula for the distribution of offender wages and gratuities.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account; ~~(and)~~

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account; ~~(and)~~

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(c) The formula shall include the following minimum deduction from class IV gross gratuities: Five percent to the department to contribute to the cost of incarceration.

(d) The formula shall include the following minimum deductions from class III gratuities: Five percent for the purpose of crime victims' compensation.

Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under (a)(ii) or (b)(ii) of this subsection.

The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the time of his or her release from confinement, unless the secretary determines that an emergency exists for the inmate, at which time the funds can be made available to the inmate in an amount determined by the secretary. The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

In the event that the offender worker's wages or gratuity is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(2) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(3) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(4) The expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(a) Not later than June 30, 1995, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II

correctional industries work programs above the number so employed on June 30, 1994;

(b) Not later than June 30, 1996, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(c) Not later than June 30, 1997, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(d) Not later than June 30, 1998, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(e) Not later than June 30, 1999, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(f) Not later than June 30, 2000, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994.

(5) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

**Sec. 3.** RCW 72.65.050 and 1979 c 141 s 278 are each amended to read as follows:

A prisoner employed under a work release plan shall surrender to the secretary, or to the superintendent of such state correctional institution as shall be designated by the secretary in the plan, his or her total earnings, less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and less such amount which his or her work release plan specifies he or she should retain to help meet his or her personal needs, including costs necessary for his or her participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The secretary, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: **PROVIDED**, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution,



excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: PROVIDED FURTHER, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

(3) Payments for the necessary support of the work release participant's dependents, if any.

(4) Ten percent for payment of legal financial obligations for all work release participants who have legal financial obligations owing in any Washington state superior court.

(5) Payments to creditors of the work release participant, which may be made at his or her discretion and request, upon proper proof of personal indebtedness.

~~((5))~~ (6) Payments to the work release participant himself or herself upon parole or discharge, or for deposit in his or her personal account if returned to a state correctional institution for confinement and treatment.

Passed the Senate February 13, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 127

[Substitute House Bill 2426]

### FISH AND WILDLIFE ENFORCEMENT CODE—ACTING FOR COMMERCIAL PURPOSES

AN ACT Relating to acting for commercial purposes under the fish and wildlife code; amending RCW 77.15.110; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** The legislature intends to clarify that when a crime under chapter 77.15 RCW requires proof that a person acted for commercial purposes, that element refers to engaging in particular conduct that is commercial in nature and the element does not imply that a particular state of mind must exist. This act revises the existing definition of that element to confirm that the element is fulfilled by engaging in commercial conduct and to eliminate any implication that a particular mental state of mind must be shown. Examples are given of the type of conduct that may be considered as evidence that a person acts for a commercial purpose; however, these examples do not create a conclusive presumption that a person acts for a commercial purpose.

**Sec. 2.** RCW 77.15.110 and 2001 c 253 s 27 are each amended to read as follows:

(1) For purposes of this chapter, a person acts for commercial purposes if the person engages in conduct that relates to commerce in fish, seaweed, shellfish, or wildlife or any parts thereof. Commercial conduct may include taking, delivering,

selling, buying, or trading fish, seaweed, shellfish, or wildlife where there is present or future exchange of money, goods, or any valuable consideration. Evidence that a person acts for commercial purposes includes, but is not limited to, the following conduct:

~~((a) (Acts with intent to sell, attempted to sell, sold, bartered, attempted to purchase, or purchased fish, seaweed, shellfish, or wildlife;~~

~~—(b) Uses))~~ Using gear typical of that used in commercial fisheries;

~~((c) Exceeds))~~ (b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, seaweed, shellfish, or wildlife allowed;

~~((d) Delivers or attempts))~~ (c) Delivering (or attempting to deliver fish, seaweed, shellfish, or wildlife to a person who sells or resells fish, seaweed, shellfish, or wildlife including any licensed or unlicensed wholesaler;

~~((e) Takes))~~ (d) Taking fish or shellfish using a vessel designated on a commercial fishery license ~~((and))~~ or using gear not authorized in a personal use fishery;

~~((f) Sells or deals))~~ (e) Using a commercial fishery license;

(f) Selling or dealing in raw furs; or

~~(g) ((Performs))~~ Performing taxidermy service on fish, shellfish, or wildlife belonging to another person for a fee or receipt of goods or services.

(2) For purposes of this chapter, the value of any fish, seaweed, shellfish, or wildlife may be proved based on evidence of legal or illegal sales involving the person charged or any other person, of offers to sell or solicitation of offers to sell by the person charged or by any other person, or of any market price for the fish, seaweed, shellfish, or wildlife including market price for farm-raised game animals. The value assigned to specific fish, seaweed, shellfish, or wildlife by RCW 77.15.420 may be presumed to be the value of such fish, seaweed, shellfish, or wildlife. It is not relevant to proof of value that the person charged misrepresented that the fish, seaweed, shellfish, or wildlife was taken in compliance with law if the fish, seaweed, shellfish, or wildlife was unlawfully taken and had no lawful market value.

Passed the House February 12, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 128

[Engrossed Substitute Senate Bill 6076]

FISH AND WILDLIFE OFFICERS

AN ACT Relating to law enforcement officers of the department of fish and wildlife; amending RCW 10.93.020, 10.93.140, 77.12.055, and 77.15.096; and reenacting and amending RCW 41.26.030.

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

**Sec. 1.** RCW 10.93.020 and 1994 c 264 s 3 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol ((is a)) and the department of fish and wildlife are general authority Washington law enforcement ((agency)) agencies.

(2) "Limited authority Washington law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources(~~(fish and wildlife,))~~) and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(4) "Limited authority Washington peace officer" means any full-time, fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. A limited authority Washington peace officer may be a specially commissioned Washington peace officer if otherwise qualified for such status under this chapter.

(5) "Specially commissioned Washington peace officer", for the purposes of this chapter, means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon or Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho. A reserve peace officer is an individual who is an officer of a Washington law enforcement agency who does not serve such

agency on a full-time basis but who, when called by the agency into active service, is fully commissioned on the same basis as full-time peace officers to enforce the criminal laws of the state.

(6) "Federal peace officer" means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(7) "Agency with primary territorial jurisdiction" means a city or town police agency which has responsibility for police activity within its boundaries; or a county police or sheriff's department which has responsibility with regard to police activity in the unincorporated areas within the county boundaries; or a statutorily authorized port district police agency or four-year state college or university police agency which has responsibility for police activity within the statutorily authorized enforcement boundaries of the port district, state college, or university.

(8) "Primary commissioning agency" means (a) the employing agency in the case of a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer, and (b) the commissioning agency in the case of a specially commissioned Washington peace officer (i) who is performing functions within the course and scope of the special commission and (ii) who is not also a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer.

(9) "Primary function of an agency" means that function to which greater than fifty percent of the agency's resources are allocated.

(10) "Mutual law enforcement assistance" includes, but is not limited to, one or more law enforcement agencies aiding or assisting one or more other such agencies through loans or exchanges of personnel or of material resources, for law enforcement purposes.

**Sec. 2.** RCW 10.93.140 and 1985 c 89 s 14 are each amended to read as follows:

This chapter does not limit the scope of jurisdiction and authority of the Washington state patrol and the department of fish and wildlife as otherwise provided by law, and ~~((the Washington state patrol))~~ these agencies shall not be bound by the reporting requirements of RCW 10.93.030.

**Sec. 3.** RCW 41.26.030 and 1996 c 178 s 11 and 1996 c 38 s 2 are each reenacted and amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150,

any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2)) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other

normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions

established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan 1 members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a



member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(20) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(28) "Plan 1" means the law enforcement officers' and fire fighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan 2" means the law enforcement officers' and fire fighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol or the department of fish and wildlife. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources(~~(, fish and wildlife,)~~) and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

**Sec. 4.** RCW 77.12.055 and 2000 c 107 s 212 are each amended to read as follows:

(1) Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this title, rules of the department, and other statutes as prescribed by the legislature. ~~((However, when acting within the scope of these duties and when an offense occurs in the presence of the fish and wildlife officer who is not an ex officio fish and wildlife officer, the fish and wildlife officer may enforce all criminal laws of the state. The fish and wildlife officer must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a course approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.))~~ Fish and wildlife officers who are not ex officio officers shall have and exercise, throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally. An applicant for a fish and wildlife officer position must be a citizen of the United States of America who can read and write

the English language. All fish and wildlife officers employed after the effective date of this section must successfully complete the basic law enforcement academy course, known as the basic course, sponsored by the criminal justice training commission, or the basic law enforcement equivalency certification, known as the equivalency course, provided by the criminal justice training commission. All officers employed on the effective date of this section must have successfully completed the basic course, the equivalency course, or the supplemental course in criminal law enforcement, known as the supplemental course, offered under chapter 155, Laws of 1985. Any officer who has not successfully completed the basic course, the equivalency course, or the supplemental course must complete the basic course or the equivalency course within fifteen months of the effective date of this section.

(2) Fish and wildlife officers are peace officers. However, nothing in this section or RCW 10.93.020 confers membership to such officers in the Washington law enforcement officers' and fire fighters' retirement system under chapter 41.26 RCW.

(3) Any liability or claim of liability under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a fish and wildlife officer rests with the department unless the fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under an agreement between the department and another agency.

(4) Fish and wildlife officers may serve and execute warrants and processes issued by the courts.

~~((5) Fish and wildlife officers may enforce RCW 79.01.805 and 79.01.810. — (6) Fish and wildlife officers are authorized to enforce all provisions of chapter 88.02 RCW and any rules adopted under that chapter, and the provisions of RCW 79A.05.310 and any rules adopted under that section.~~

~~— (7) To enforce the laws of this title, fish and wildlife officers may call to their aid any ex officio fish and wildlife officer or citizen and that person shall render aid.)~~

**Sec. 5.** RCW 77.15.096 and 2001 c 253 s 26 are each amended to read as follows:

Fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner the premises, containers, fishing equipment, fish, seaweed, shellfish, and wildlife, and records required by the department of any commercial fisher or wholesale dealer or fish buyer. Fish and wildlife officers may similarly inspect without warrant the premises, containers, fishing equipment, fish, shellfish, and wildlife, and records required by the department of any shipping agent or other person placing or attempting to place fish, shellfish, or wildlife into interstate commerce, any cold storage plant that the department has probable cause to believe contains fish, shellfish, or wildlife, or of any taxidermist or fur buyer. Fish and wildlife officers may inspect without warrant the records required by the department of any retail outlet selling fish, shellfish, or wildlife, and, if the officers

have probable cause to believe a violation of this title or rules of the commission has occurred, they may inspect without warrant the premises, containers, and fish, shellfish, and wildlife of any retail outlet selling fish, shellfish, or wildlife. Authority granted under this section does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution.

Passed the Senate February 19, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 129

[Engrossed House Bill 2841]

### HIGHER EDUCATION COORDINATING BOARD—STUDENT MEMBER

AN ACT Relating to the appointment of a student member to the higher education coordinating board; and amending RCW 28B.80.390 and 28B.80.400.

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

**Sec. 1.** RCW 28B.80.390 and 1985 c 370 s 10 are each amended to read as follows:

The board shall consist of (~~nine~~) ten members, one of whom shall be a student, who are representative of the public, including women and the racial minority community. All members shall be appointed at large by the governor and approved by the senate. The governor shall appoint the chair, who shall serve at the governor's pleasure.

**Sec. 2.** RCW 28B.80.400 and 1985 c 370 s 11 are each amended to read as follows:

The members of the board, except the chair and the student member, shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term except that in the case of initial members, two shall be appointed to two-year terms, three shall be appointed to three-year terms, and three shall be appointed to four-year terms. The student member shall hold his or her office for a term of one year from the first day of July.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 130

[Substitute Senate Bill 5552]

## HIGHER EDUCATION—BORDER COUNTIES

AN ACT Relating to border county higher education opportunities; amending RCW 28B.80.805, 28B.80.806, 28B.15.0139, and 28B.80.807; amending 2000 c 160 s 4 (uncodified); amending 1999 c 320 s 6 (uncodified); and providing an expiration date.

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

**Sec. 1.** RCW 28B.80.805 and 1999 c 320 s 1 are each amended to read as follows:

(1) The legislature finds that certain tuition policies in Oregon state are more responsive to the needs of students living in economic regions that cross the state border than the Washington state policies. Under Oregon policy, students who are Washington residents may enroll at Portland State University for eight credits or less and pay the same tuition as Oregon residents. Further, the state of Oregon passed legislation in 1997 to begin providing to its community colleges the same level of state funding for students residing in bordering states as students residing in Oregon.

(2) The legislature intends to build on the recent Oregon initiatives regarding tuition policy for students in bordering states and to facilitate regional planning for higher education delivery by creating a pilot project on resident tuition rates in ~~((four))~~ Washington counties that border Oregon state.

**Sec. 2.** RCW 28B.80.806 and 2000 c 160 s 3 are each amended to read as follows:

(1) The border county higher education opportunity pilot project is created. The purpose of the pilot project is to allow ~~((four))~~ Washington institutions of higher education that are located in ~~((four))~~ counties on the Oregon border to implement ~~((on a trial basis,))~~ tuition policies that correspond to Oregon policies. Under the border county pilot project, Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and ~~((Clark)) Walla Walla Community College~~ may enroll students who reside in the bordering Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, ~~Morrow, Sherman, Umatilla, Union, Wallowa, Wasco,~~ and Washington at resident tuition rates. The Tri-Cities and Vancouver ~~((branch))~~ branches of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, ~~Morrow, Umatilla, Union, Wallowa,~~ and Washington for eight credits or less at resident tuition rates.

(2) Washington institutions of higher education participating in the pilot project shall give priority program enrollment to Washington residents.

**Sec. 3.** RCW 28B.15.0139 and 2000 c 160 s 2 are each amended to read as follows:

For the purposes of determining resident tuition rates, "resident student" includes a resident of Oregon, residing in Columbia, Gilliam, Hood River,

Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county, who meets the following conditions:

(1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least (~~ninety consecutive days~~) one year immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or (~~Pacific~~) Walla Walla county, Washington; or

(2) The student is enrolled in courses located at the Tri-Cities or Vancouver branch of Washington State University for eight credits or less.

**Sec. 4.** RCW 28B.80.807 and 1999 c 320 s 3 are each amended to read as follows:

(1) The higher education coordinating board shall administer Washington's participation in the border county higher education opportunity pilot project.

(2) By (~~November 30, 2001~~) December 1, 2003, the board shall report to the governor and appropriate committees of the legislature on the results of the pilot project. For each participating Washington institution of higher education, the report shall analyze, by program, the impact of the pilot project on: Enrollment levels, distribution of students by residency, and enrollment capacity. The report shall also include a recommendation on the extent to which border county tuition policies should be revised or expanded.

**Sec. 5.** 2000 c 160 s 4 (uncodified) is amended to read as follows:  
This act expires June 30, (~~2002~~) 2004.

**Sec. 6.** 1999 c 320 s 6 (uncodified) is amended to read as follows:  
This act expires June 30, (~~2002~~) 2004.

**NEW SECTION. Sec. 7.** This act expires June 30, 2004.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 131

[Senate Bill 6457]

### ATHLETE AGENT ACT

AN ACT Relating to athlete agents; 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. SHORT TITLE.** This chapter may be cited as the Uniform Athlete Agents Act.

**NEW SECTION. Sec. 2. DEFINITIONS.** In this chapter:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, grandparent, or legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. The term includes an individual who represents to the public that the individual is an athlete agent.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(8) "Professional-sports-services contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "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.

(10) "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.

(11) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.



**NEW SECTION. Sec. 3. SERVICE OF PROCESS.** By engaging in the business of an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.

**NEW SECTION. Sec. 4. ATHLETE AGENTS—DELIVERY OF DISCLOSURE FORM REQUIRED.** (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state unless on the day of initial contact with any student-athlete the athlete agent delivers to the student-athlete the athlete agent disclosure form as required by section 5 of this act.

(2) An individual may act as an athlete agent before delivering an athlete agent disclosure form for all purposes except signing an agency contract if:

(a) A student-athlete or another acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within seven days after an initial act as an athlete agent, the individual delivers an athlete agent disclosure form to the student-athlete.

(3) An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

**NEW SECTION. Sec. 5. ATHLETE AGENT DISCLOSURE FORM—REQUIREMENTS.** (1) The athlete agent disclosure form must be in a record executed in the name of an individual and signed by the athlete agent under penalty of perjury and, except as otherwise provided in subsection (2) of this section, must state or contain:

(a) The name of the athlete agent and the address of the athlete agent's principal place of business;

(b) The name of the athlete agent's business or employer, if applicable;

(c) Any business or occupation engaged in by the athlete agent for the five years next preceding the date of execution of the athlete agent disclosure form;

(d) A description of the athlete agent's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the athlete agent's activities as an athlete agent;

(e) The names and addresses of three individuals not related to the athlete agent who are willing to serve as references;

(f) The name, sport, and last known team for each individual for whom the athlete agent provided services as an athlete agent during the five years next preceding the date of execution of the athlete agent disclosure form;

(g) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates, or profit-sharers; and

(ii) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation with a five percent or greater interest;

(h) Whether the athlete agent or any other person named pursuant to (g) of this subsection has been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude, and identify the crime;

(i) Whether there has been any administrative or judicial determination that the athlete agent or any other person named pursuant to (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;

(j) Any instance in which the conduct of the athlete agent or any other person named pursuant to (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(k) Any sanction, suspension, or disciplinary action taken against the athlete agent or any other person named pursuant to (g) of this subsection arising out of occupational or professional conduct; and

(l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the athlete agent or any other person named pursuant to (g) of this subsection as an athlete agent in any state.

(2) An individual who has submitted an application for, and received a certificate of or a renewal of a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an athlete agent disclosure form in the form prescribed pursuant to subsection (1) of this section, but only if the application to the other state:

(a) Was submitted in the other state within the six months next preceding the date of delivery of the athlete agent disclosure form in this state and the athlete agent certifies the information contained in the application is current;

(b) Contains information substantially similar to or more comprehensive than that required in an athlete agent disclosure form under subsection (1) of this section; and

(c) Was signed by the athlete agent under penalty of perjury.

**NEW SECTION. Sec. 6. DISQUALIFICATIONS.** No person may engage in the business of an athlete agent who has:

(1) Been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude;

(2) Made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in the application for licensure or registration as an athlete agent in another state;

(3) Engaged in conduct prohibited by section 11 of this act;

(4) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state; or

(5) Engaged in conduct or failed to engage in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution.

**NEW SECTION. Sec. 7. FORM OF CONTRACT.** (1) An agency contract must be in a record signed by the parties.

(2) An agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person other than the athlete agent who will be compensated because the student athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE**

**IF YOU SIGN THIS CONTRACT:**

**(a) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;**

**(b) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, AT LEAST SEVENTY-TWO HOURS PRIOR TO ENTERING INTO AN AGENCY CONTRACT AND AGAIN WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND**

**(c) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

(4) A copy of the athlete agent disclosure form delivered to the student-athlete shall be attached to the agency contract.

(5) An agency contract that does not conform to this section is voidable by the student-athlete.

(6) The athlete agent shall give a copy of the signed agency contract to the student-athlete at the time of signing.

**NEW SECTION. Sec. 8. NOTICE TO EDUCATIONAL INSTITUTION.**

(I) At least seventy-two hours prior to entering into an agency contract, the athlete agent shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form to the athletic director of the educational

institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(3) At least seventy-two hours prior to entering into an agency contract, the student-athlete shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form to the athletic director of the educational institution at which the student-athlete is enrolled.

(4) Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract and shall provide a copy of the athlete agent disclosure form.

**NEW SECTION. Sec. 9. STUDENT-ATHLETE'S RIGHT TO CANCEL.**

(1) A student-athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within fourteen days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student-athlete to enter into the contract.

**NEW SECTION. Sec. 10. REQUIRED RECORDS.** (1) An athlete agent shall retain the following records for a period of five years:

- (a) The name and address of each individual represented by the athlete agent;
- (b) Any agency contract entered into by the athlete agent; and
- (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete.

(2) Records required by subsection (1) of this section to be retained are subject to subpoena in a judicial proceeding.

**NEW SECTION. Sec. 11. PROHIBITED ACTS.** (1) An athlete agent may not do any of the following with the intent to induce a student-athlete to enter into an agency contract:

- (a) Give any materially false or misleading information or make a materially false promise or representation;
- (b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) Initiate contact with a student-athlete unless providing the student-athlete with the athlete agent disclosure form as provided in section 4 of this act;

(b) Refuse or willfully fail to retain or produce in response to subpoena the records required by section 10 of this act;

(c) Fail to disclose information required by section 5 of this act;

(d) Provide materially false or misleading information in an athlete agent disclosure form;

(e) Predate or postdate an agency contract;

(f) Fail to notify a student-athlete prior to the student-athlete's signing an agency contract for a particular sport that the signing by the student-athlete may make the student-athlete ineligible to participate as a student-athlete in that sport;

(g) Ask or allow a student-athlete to waive or attempt to waive rights under this chapter;

(h) Fail to give notice required under section 8 of this act; or

(i) Engage in the business of an athlete agent in this state: (A) At any time after conviction under section 12 of this act; or (B) within five years of entry of a civil judgment under section 13 of this act.

**NEW SECTION. Sec. 12. CRIMINAL PENALTIES.** The commission of any act prohibited by section 11 of this act by an athlete agent is a class C felony punishable according to chapter 9A.20 RCW. In addition to any criminal penalties, the court may assess a civil penalty of up to ten thousand dollars for a violation of section 11 of this act.

**NEW SECTION. Sec. 13. CIVIL REMEDIES.** (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorneys' fees.

(2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the activities of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

NEW SECTION. **Sec. 14. APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter of this chapter among states that enact it.

NEW SECTION. **Sec. 15. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 16. CAPTIONS NOT LAW.** Captions used in this chapter are not any part of the law.

NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act constitute a new chapter in Title 19 RCW.

Passed the Senate March 11, 2002.  
Passed the House March 5, 2002.  
Approved by the Governor March 26, 2002.  
Filed in Office of Secretary of State March 26, 2002.

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**CHAPTER 132**

[Substitute Senate Bill 5823]

**STUDENT IMPROVEMENT GOALS—REPEALED**

AN ACT Relating to repealing student improvement goals; and repealing RCW 28A.655.050.

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

NEW SECTION. **Sec. 1.** RCW 28A.655.050 (Reading goals—Mathematics goals) and 1999 c 388 s 201 & 1998 c 319 s 101 are each repealed.

Passed the Senate February 15, 2002.  
Passed the House March 7, 2002.  
Approved by the Governor March 26, 2002.  
Filed in Office of Secretary of State March 26, 2002.

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**CHAPTER 133**

[Engrossed Senate Bill 6232]

**POSSESSION OF AMMONIA**

AN ACT Relating to possession of ammonia; amending RCW 69.55.010, 69.55.020, and 69.55.030; reenacting and amending RCW 9.94A.515; prescribing penalties; and declaring an emergency.

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

**Sec. 1.** RCW 69.55.010 and 2000 c 225 s 1 are each amended to read as follows:

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains ~~((anhydrous))~~ pressurized ammonia gas or pressurized ammonia gas solution, is guilty of theft of ~~((anhydrous))~~ ammonia.

(2) Theft of ~~((anhydrous))~~ ammonia is a class C felony.

**Sec. 2.** RCW 69.55.020 and 2000 c 225 s 2 are each amended to read as follows:

A person is guilty of the crime of unlawful storage of ~~((anhydrous))~~ ammonia if the person possesses ~~((anhydrous))~~, transports, or delivers pressurized ammonia gas or pressurized ammonia gas solution in a container that (1) is not approved by the United States department of transportation to hold ~~((anhydrous))~~ ammonia, or (2) was not constructed to meet state and federal industrial health and safety standards for holding ~~((anhydrous))~~ ammonia. Violation of this section is a class C felony.

This section does not apply to public employees or private contractors authorized to clean up and dispose of hazardous waste or toxic substances under chapter 70.105 or 70.105D RCW or to solid waste haulers and their employees who unknowingly possess, transport, or deliver pressurized ammonia gas or pressurized ammonia gas solution during the course of the performance of their duties.

**Sec. 3.** RCW 69.55.030 and 2000 c 225 s 3 are each amended to read as follows:

Any damages arising out of the unlawful possession of, storage of, or tampering with ~~((anhydrous))~~ pressurized ammonia gas or pressurized ammonia gas solution, or ~~((anhydrous))~~ pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, shall be the sole responsibility of the unlawful possessor, storer, or tamperer. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with ~~((anhydrous))~~ pressurized ammonia gas or pressurized ammonia gas solution, or ~~((anhydrous))~~ pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the ~~((anhydrous))~~ pressurized ammonia gas or pressurized ammonia gas solution, or ~~((anhydrous))~~ pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, unless such damages arise out of the owner, installer, maintainer, designer, manufacturer, possessor, or seller's acts or omissions that constitute negligent misconduct to abide by the laws regarding ~~((anhydrous))~~ pressurized ammonia gas or pressurized ammonia gas solution possession and storage.

**Sec. 4.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s 4, 2001 c 217 s 12, and 2001 c 17 s 1 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)  
 Sexually Violent Predator Escape (RCW 9A.76.115)
- 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))

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 9A.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(3)(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(3)(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))

- 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, by being under the influence  
of intoxicating liquor or any drug, or by  
the operation or driving of a vehicle in a  
reckless manner (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(3)(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)
  - Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
  - 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)
- 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)

**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 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 134

[Substitute Senate Bill 6233]

### POSSESSION OF EPHEDRINE, PSEUDOEPHEDRINE, AND AMMONIA

AN ACT Relating to possession of ephedrine, pseudoephedrine, and ammonia; amending RCW 69.50.440, 9.94A.605, and 26.44.200; reenacting and amending RCW 9.94A.515; prescribing penalties; and declaring an emergency.

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

**Sec. 1.** RCW 69.50.440 and 2000 c 225 s 4 are each amended to read as follows:

It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, ~~((or anhydrous))~~ pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine. Any person who violates this section is guilty of a crime and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost.

**Sec. 2.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s 4, 2001 c 217 s 12, and 2001 c 17 s 1 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) Sexually Violent Predator Escape (RCW 9A.76.115)
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))
- 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 or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, ((or Anhydrous)) Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution 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(I) (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 9A.41.040(1)(a))  
Use of a Machine Gun in Commission of a Felony (RCW 9A.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(3)(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 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(3)(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 I (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))
  - 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, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)

Vehicular Assault, by the operation or driving  
of a vehicle with disregard for the safety  
of others (RCW 46.61.522)

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)
  - 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. 3.** RCW 9.94A.605 and 2000 c 132 s 1 are each amended to read as follows:

In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401(a) relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation.

**Sec. 4.** RCW 26.44.200 and 2001 c 52 s 3 are each amended 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 any of its

salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately.

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 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

**CHAPTER 135**

[Engrossed House Bill 2491]

**AGRICULTURAL COMMODITIES—FACILITY INSPECTION**

AN ACT Relating to inspection of facilities used for temporary storage and processing of agricultural commodities; and reenacting and amending RCW 19.27.060.

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

**Sec. 1.** RCW 19.27.060 and 1989 c 266 s 2 and 1989 c 246 s 1 are each reenacted and amended to read as follows:

(1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code.

(a) No amendment to a code enumerated in RCW 19.27.031 as amended and adopted by the state building code council that affects single family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b).

(b) Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(3) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single family or multifamily residential



buildings(~~(-PROVIDED, That)~~). However, in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses constitute combustible stock for the purposes of application of the uniform fire code. A governing body of a county or city may inspect facilities used for temporary storage and processing of agricultural commodities.

(4) The provisions of this chapter shall not apply to any building four or more stories high with a B occupancy as defined by the uniform building code, 1982 edition, and with a city fire insurance rating of 1, 2, or 3 as defined by a recognized fire rating bureau or organization.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: **PROVIDED**, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

(7)(a) Effective one year after July 23, 1989, the governing bodies of counties and cities may adopt an ordinance or resolution to exempt from permit requirements certain construction or alteration of either group R, division 3, or group M, division 1 occupancies, or both, as defined in the uniform building code, 1988 edition, for which the total cost of fair market value of the construction or alteration does not exceed fifteen hundred dollars. The permit exemption shall not otherwise exempt the construction or alteration from the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the state building code council under RCW 19.27.070.

(b) Prior to July 23, 1989, the state building code council shall adopt by rule, guidelines exempting from permit requirements certain construction and alteration activities under (a) of this subsection.

Passed the House February 17, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 136

[Senate Bill 6292]

### LAY JUDICIAL OFFICERS

AN ACT Relating to authorizing lay judicial officers; and amending RCW 3.34.060 and 3.50.040.

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

**Sec. 1.** RCW 3.34.060 and 1991 c 361 s 1 are each amended to read as follows:

To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:

(1) Be a registered voter of the district court district and electoral district, if any; and

(2) Be either:

(a) A lawyer admitted to practice law in the state of Washington; or

(b) ~~((A person who has been elected and has served as a justice of the peace, district judge, municipal judge, or police judge in Washington; or~~

~~—(c)))~~ In those districts having a population of less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for ~~((the office of district judge))~~ a lay candidate for judicial officer as ((shall be)) provided by rule of the supreme court.

**Sec. 2.** RCW 3.50.040 and 1984 c 258 s 106 are each amended to read as follows:

Within thirty days after the effective date of the ordinance creating the municipal court, the mayor of each city or town shall appoint a municipal judge or judges of the municipal court for a term of four years. The terms of judges serving on July 1, 1984, and municipal judges who are appointed to terms commencing before January 1, 1986, shall expire January 1, 1986. The terms of their successors shall commence on January 1, 1986, and on January 1 of each fourth year thereafter, pursuant to appointment or election as provided in this chapter. Appointments shall be made on or before December 1 of the year next preceding the year in which the terms commence.

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge.

A person appointed as a full-time or part-time municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington: **PROVIDED**, That in a municipality having a population less than five thousand persons, a person ~~((other than an attorney))~~ who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court may be the judge. Any city or town shall have authority to appoint a district judge as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a district judge, the city or town shall pay a pro rata share of the salary.

Passed the Senate February 16, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 137

[Senate Bill 6511]

## JUDGES PRO TEMPORE

AN ACT Relating to judges pro tempore; and amending RCW 2.08.180.

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

**Sec. 1.** RCW 2.08.180 and 1987 c 73 s 1 are each amended to read as follows:

A case in the superior court of any county may be tried by a judge pro tempore, who must be either: (1) A member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; ((and his)) or (2) pursuant to supreme court rule, any sitting elected judge. Any action in the trial of such cause shall have the same effect as if ((he were)) it was made by a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his or her duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein . . . . . is plaintiff and . . . . . defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of ((an inferior)) a court of the state of Washington, shall receive a compensation of one-two hundred ((and)) fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active judge of ((an inferior)) a court of the state of Washington shall receive no compensation as judge pro tempore. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section.

Passed the Senate February 15, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 138

[Senate Bill 6596]

## DISTRICT COURT JUDGES—SPOKANE COUNTY

AN ACT Relating to the number of district court judges in Spokane county; and amending RCW 3.34.010.

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

**Sec. 1.** RCW 3.34.010 and 1998 c 64 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, five; Columbia, one; Cowlitz, two; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-six; Kitsap, three; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ~~((nine))~~ ten; Stevens, one; Thurston, two; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

Passed the Senate February 13, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 139

[Senate Bill 6571]

### BALLOT MEASURES—FISCAL IMPACT STATEMENTS

AN ACT Relating to information about ballot measures; amending RCW 29.81.250; and adding a new section to chapter 29.79 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 29.79 RCW to read as follows:

The office of financial management, in consultation with the secretary of state, the attorney general, and any other appropriate state or local agency, shall prepare a fiscal impact statement for each of the following state ballot measures: (1) An initiative to the people that is certified to the ballot; (2) an initiative to the legislature that will appear on the ballot; (3) an alternative measure appearing on the ballot that the legislature proposes to an initiative to the legislature; (4) a referendum bill referred to voters by the legislature; and (5) a referendum measure appearing on the ballot. Fiscal impact statements must be written in clear and concise language and avoid legal and technical terms when possible, and may include easily understood graphics.

A fiscal impact statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure were approved by state voters. Where appropriate, a fiscal impact statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. A fiscal impact statement must include both a summary of not to exceed one hundred words and a more detailed statement that includes the assumptions that were made to develop the fiscal impacts.

Fiscal impact statements must be available online from the secretary of state's web site and included in the state voters' pamphlet.

**Sec. 2.** RCW 29.81.250 and 1999 c 260 s 5 are each amended to read as follows:

The secretary of state shall determine the format and layout of the voters' pamphlet. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Federal and state offices must appear in the pamphlet in the same sequence as they appear on the ballot. Measures and arguments must be printed in the order specified by RCW 29.79.300.

The voters' pamphlet must provide the following information for each statewide issue on the ballot:

- (1) The legal identification of the measure by serial designation or number;
- (2) The official ballot title of the measure;
- (3) A statement prepared by the attorney general explaining the law as it presently exists;
- (4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;
- (5) The fiscal impact statement prepared under section 1 of this act;
- (6) The total number of votes cast for and against the measure in the senate and house of representatives, if the measure has been passed by the legislature;
- ~~((6))~~ (7) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;
- ~~((7))~~ (8) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;
- ~~((8))~~ (9) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;
- ~~((9))~~ (10) The full text of each measure.

Passed the Senate February 14, 2002.

Passed the House March 12, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 140

[Senate Bill 6321]

### ELECTIONS—DECLARATION OF CANDIDACY—ELECTRONIC FILING

AN ACT Relating to electronically filing declarations of candidacy; amending RCW 29.15.010 and 29.15.030; adding new sections to chapter 29.15 RCW; and creating new sections.

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

**Sec. 1.** RCW 29.15.010 and 1990 c 59 s 82 are each amended to read as follows:

A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration and affidavit of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29.15.050;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29.15.050.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 29.15 RCW to read as follows:

**ELECTRONIC FILING.** A candidate may file his or her declaration of candidacy for an office by electronic means on a system specifically designed and authorized by a filing officer to accept filings.

(1) Filings that are received electronically must capture all information specified in RCW 29.15.010 (1) through (4).

(2) Electronic filing may begin at 9:00 a.m. the fourth Monday in July and continue through 4:00 p.m. the following Friday.

(3) In case of special filing periods established in this chapter, electronic filings may be accepted beginning at 9:00 a.m. on the first day of the special filing period through 4:00 p.m. the last day of the special filing period.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 29.15 RCW to read as follows:

**STANDARDS FOR ELECTRONIC FILING.** The secretary of state as chief election officer may adopt rules, in accordance with chapter 34.05 RCW, to facilitate electronic filing and establish which jurisdictions are eligible to accept electronic filing. The rules must detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. Such rules may also impose additional requirements related to implementation of electronic filing processes.

**Sec. 4.** RCW 29.15.030 and 1998 c 22 s 1 are each amended to read as follows:

Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when voters from a district comprising more than one county vote upon the candidates;

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW ~~((28A.315.380))~~ 28A.323.040.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall ~~((forward))~~ transmit to the public disclosure commission ~~((a copy of))~~ the information required in RCW 29.15.010 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission.

**NEW SECTION.** **Sec. 5.** The secretary of state may take the necessary steps to ensure that this act is implemented on its effective date.

**NEW SECTION.** **Sec. 6.** Section captions used in this act are not part of the law.

Passed the Senate February 14, 2002.  
Passed the House March 6, 2002.  
Approved by the Governor March 26, 2002.  
Filed in Office of Secretary of State March 26, 2002.

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**CHAPTER 141**

[Senate Bill 6465]

**COUNTY AUDITORS—DUTIES**

AN ACT Relating to county auditors; and amending RCW 36.22.110.

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

**Sec. 1.** RCW 36.22.110 and 1963 c 4 s 36.22.110 are each amended to read as follows:

The person holding the office of county auditor, or deputy, or performing its duties, shall not practice as an attorney or represent any person who is making any claim against the county, or who is seeking to procure any legislative or other action by the board of county commissioners. ~~((The county auditor, during his term of office, and any deputy appointed by him is disqualified from performing the duties of any other county officer or acting as deputy for any other county officer. Nor shall any other county officer or his deputy act as auditor or deputy, or perform any of the duties of said office.))~~

Passed the Senate March 11, 2002.  
Passed the House March 6, 2002.  
Approved by the Governor March 26, 2002.  
Filed in Office of Secretary of State March 26, 2002.

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**CHAPTER 142**

[Substitute House Bill 2536]

**SCHOOL DISTRICT EMPLOYEES—BENEFIT PLANS**

AN ACT Relating to offering health care benefit plans to school district employees; amending RCW 41.05.021 and 41.05.065; and reenacting and amending RCW 41.05.050 and 41.05.075.

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

**Sec. 1.** RCW 41.05.021 and 1999 c 372 s 4 are each amended to read as follows:

(1) The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW.



The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; and implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis; and

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To appoint a health care policy technical advisory committee as required by RCW 41.05.150;

(g) To establish billing procedures and collect funds from school districts and educational service districts under RCW 28A.400.400 in a way that minimizes the administrative burden on districts; ~~((and))~~

(h) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled; and

(i) To promulgate and adopt rules consistent with this chapter as described in RCW 41.05.160.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

(a) Standardizing the benefit package;

(b) Soliciting competitive bids for the benefit package;

(c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans state-wide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans.

**Sec. 2.** RCW 41.05.050 and 1995 1st sp.s. c 6 s 22 and 1994 c 153 s 4 are each reenacted and amended to read as follows:

(1) Every department, division, or separate agency of state government, and such county, municipal, school district, educational service district, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, ~~((school district, educational service district,))~~ or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups~~((-- Until October 1, 1995, contributions to be paid by school districts or educational service districts shall be adjusted by the authority to reflect the remittance provided under RCW 28A.400.400)),~~ except as provided in subsection (3) of this section.

(2) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(3)(a) Beginning September 1, 2002, school districts and educational service districts shall be charged the same composite rate as state agencies, plus the same

amounts for employee premiums by plan and family size as are charged to state employees, for groups of district employees enrolled in authority plans as of January 1, 2002.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2002, the authority shall charge districts the same composite rate charged to state agencies, plus the same amounts for employee premiums by plan and by family size as are charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(4) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature.

**Sec. 3.** RCW 41.05.065 and 1996 c 140 s 1 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate

weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits.

(3) The board shall design benefits and determine the terms and conditions of employee participation and coverage, including establishment of eligibility criteria. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. The board shall require participating school district and educational service district employees to pay the same employee premiums by plan and family size as state employees pay.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(6) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or

retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the

eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section.

**Sec. 4.** RCW 41.05.075 and 1994 sp.s. c 9 s 724, 1994 c 309 s 3, and 1994 c 153 s 6 are each reenacted and amended to read as follows:

(1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

~~((7) Beginning in January 1990, and each January thereafter until January 1996, the administrator shall publish and distribute to each school district a~~

~~description of health care benefit plans available through the authority and the estimated cost if school district employees were enrolled.))~~

Passed the House February 14, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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**CHAPTER 143**

[Substitute Senate Bill 6600]

**POLICE DEPARTMENTS—UNCLASSIFIED POSITIONS**

AN ACT Relating to authorizing unclassified position appointments in city or town police departments; amending RCW 41.12.050; and repealing RCW 41.12.060.

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

**Sec. 1.** RCW 41.12.050 and 1993 c 189 s 1 are each amended to read as follows:

(1) For police departments with fewer than six commissioned officers, including the police chief, the classified civil service and provisions of this chapter ((staff)) includes all full paid employees of the ((police)) department of ((each)) the city, town, or municipality ((coming within its purview, except that)).

(2) For police departments with six or more commissioned officers, including the police chief, the legislative body of a city, town, or municipality may exempt from civil service individuals appointed as police chief after July 1, 1987((, to a department with six or more commissioned officers, including the police chief, may be excluded by the legislative body of the city, town or municipality)).

(a) If the police chief is not exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, including the police chief.

(b) If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

<u>Department Personnel</u>	<u>Unclassified Position Appointments</u>
<u>6 through 10</u>	<u>2</u>
<u>11 through 20</u>	<u>3</u>
<u>21 through 50</u>	<u>4</u>
<u>51 through 100</u>	<u>5</u>
<u>101 through 250</u>	<u>6</u>
<u>251 through 500</u>	<u>8</u>
<u>501 and over</u>	<u>10</u>

(3) The unclassified position appointments authorized by subsection (2)(b) of this section may only include selections from the following positions up to the limit

of the number of positions authorized: Assistant chief, deputy chief, bureau commander, and administrative assistant or administrative secretary. The initial selection of specific positions to be in the unclassified service and exempt from civil service shall be made by the police chief, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are in the unclassified service may be made only with the concurrence of the police chief, the mayor or the city administrator, and the civil service commission, and then only after the civil service commission has heard the issue in an open meeting. If a position initially selected by the police chief to be in the unclassified service is in the classified civil service at the time of the selection, and if the position is occupied, the employee occupying the position has the right to return to the next highest position or a like position in the classified civil service.

(4) All appointments to and promotions in the department shall be made solely on merit, efficiency, and fitness except as provided in RCW 35.13.360 through 35.13.400, which shall be ascertained by open competitive examination and impartial investigation. No person in the unclassified service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter.

NEW SECTION. Sec. 2. RCW 41.12.060 (Existing police blanketed under civil service) and 1937 c 13 s 6 are each repealed.

Passed the Senate March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 144

[Substitute House Bill 1397]

### KINSHIP CAREGIVERS

AN ACT Relating to children placed in the care of relatives; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature recognizes that relatives increasingly are assuming the responsibility for raising the children of their loved ones. The parents of these children are unable to fulfill this responsibility themselves because of various and complex reasons.

The legislature recognizes that these kinship caregivers perform a vital function in our society by providing homes for children who would otherwise be at risk of foster care placement. These homes offer stability to children in crisis and enhance family reunification. Outcome data shows that children in the care of relatives are less likely to enter state custody, and most of these arrangements do not require intensive supervision of the placement by the courts or by the department of social and health services. The legislature recognizes that kinship



care is a legitimate and important component in the spectrum of out-of-home placements available to children in need.

The legislature recognizes that these kinship caregivers face many difficulties and need assistance to support the health and well-being of the children they care for. These needs include, but are not limited to, legal assistance, respite care services, financial assistance, counseling, and other supportive services.

**NEW SECTION. Sec. 2.** (1) Within existing resources, the department of social and health services shall convene a kinship caregivers working group subsequent to the release in June 2002 of the kinship caregivers study being conducted by the Washington state institute for public policy. The working group shall comprise:

- (a) The children's administration;
  - (b) The aging and adult services administration;
  - (c) The economic services administration;
  - (d) Kinship caregivers; and
  - (e) Other stakeholders, such as the grandparents' coalition.
- (2) The kinship caregivers working group shall:

- (a) Review the Washington state institute for public policy kinship caregivers study;
- (b) Develop a briefing for the legislature that identifies and prioritizes:
  - (i) The policy issues to be considered in making kinship care a robust component of the out-of-home placements spectrum including consideration of a financial means test;
  - (ii) The federal and state statutes associated with these policy issues; and
  - (iii) Options for addressing these policy issues; and
- (c) Submit the briefing to the appropriate committees in the senate and house of representatives by November 1, 2002.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 145

[House Bill 2450]

### TRADE CENTER ACT

AN ACT Relating to the trade center act; amending RCW 53.29.010, 53.29.020, and 53.29.030; and adding a new section to chapter 53.29 RCW.

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

**Sec. 1.** RCW 53.29.010 and 1989 c 425 s 5 are each amended to read as follows:

It is declared to be the finding of the legislature of the state of Washington that:

(1) The servicing functions and activities connected with the oceanborne and overseas airborne trade and commerce of port districts, including customs clearance, shipping negotiations, cargo routing, freight forwarding, financing, insurance arrangements and other similar transactions which are presently performed in various, scattered physical and electronic locations in the districts should be centralized to provide for more efficient and economical transportation of persons and more efficient and economical physical or electronic facilities and services for the exchange and buying, selling and transportation of commodities and other property in world trade and commerce;

(2) Unification, at a single, centrally located physical or electronic site of a facility of commerce, i.e., a trade center, accommodating the functions and activities described in subsection (1) of this section and the appropriate governmental, administrative and other services connected with or incidental to transportation and security of persons and property and the promotion and protection of port commerce, and providing a central locale for exhibiting, and otherwise promoting the exchange and buying and selling of commodities and property in world trade and commerce, will materially assist in preserving the material and other benefits of a prosperous port community;

(3) The undertaking of the aforesaid unified trade center project by a port district or the Washington public ports association has the single object of preserving, and will aid in the promotion, security, and preservation of, the economic well-being of port districts and the state of Washington and is found and determined to be a public purpose.

**Sec. 2.** RCW 53.29.020 and 1989 c 425 s 6 are each amended to read as follows:

In addition to all other powers granted to port districts, any such district, the Washington public ports association, or the federation of Washington ports as described in RCW 53.06.070 may acquire, as provided for other port properties in RCW 53.08.010, construct, develop, operate and maintain all land or other property interests, buildings, structures or other improvements, and may participate in transactions necessary to provide, electronically or otherwise, facilities or to exercise powers or purposes of a trade center including but not limited to the following electronic or physical facilities:

(1) A facility consisting of one or more structures, improvements and areas for the centralized accommodation of public and private agencies, persons and facilities in order to afford improved service to waterborne and airborne import and export trade and commerce;

(2) Facilities for the promotion of such import and export trade and commerce, inspection, testing, display and appraisal facilities, foreign trade zones, terminal and transportation facilities, office meeting rooms, auditoriums, libraries, language translation services, storage, warehouse, marketing and exhibition facilities, facilities for federal, state, county and other municipal and governmental agencies providing services relating to the foregoing and including, but not being limited to,

customs houses and customs stores, and other incidental facilities and accommodations.

**Sec. 3.** RCW 53.29.030 and 1989 c 425 s 7 are each amended to read as follows:

(1) In carrying out the powers authorized by this chapter and chapter 53.06 RCW, port districts and the Washington public ports association are authorized to cooperate ~~((and))~~, act, and invest jointly with other public and private agencies and persons, including, but not limited to, the federal government, the state, other ports and municipal corporations, other states and their political subdivisions, and private nonprofit trade promotion groups and associate development organizations.

(2) Port districts operating trade center buildings or operating association or federation trade centers, shall pay an annual service fee to the county treasurer wherein the center is located for municipal services rendered to the trade center building. The measure of such service fee shall be equal to three percent of the gross rentals received from the nongovernmental tenants of such trade center building. Such proceeds shall be distributed by the county treasurer as follows: Forty percent to the school district, forty percent to the city, and twenty percent to the county wherein the center is located: **PROVIDED**, That if the center is located in an unincorporated area, twenty percent shall be allocated to the fire district, forty percent to the school district, and forty percent to the county.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 53.29 RCW to read as follows:

The definitions in this section apply throughout RCW 53.29.020 and 53.29.030 unless the context clearly requires otherwise.

(1) "Person" has the same meaning as defined in the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7006 (8)) in effect on the effective date of this section.

(2) "Transaction" has the same meaning as defined in the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7006 (13)) in effect on the effective date of this section. However, "transaction" also includes actions relating to governmental affairs.

Passed the House February 12, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 146

[Substitute House Bill 2466]

### MULTIPLE-UNIT DWELLINGS—TAX EXEMPTION

AN ACT Relating to the multiple-unit dwellings property tax exemption; and amending RCW 84.14.010, 84.14.020, and 84.14.110.

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

**Sec. 1.** RCW 84.14.010 and 2000 c 242 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) "City" means either (a) a city or town with a population of at least ~~((fifty))~~ thirty thousand or (b) the largest city or town, if there is no city or town with a population of at least ~~((fifty))~~ thirty thousand, located in a county planning under the growth management act.

(2) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which an exemption may be applied for under this chapter.

(3) "Growth management act" means chapter 36.70A RCW.

(4) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(5) "Owner" means the property owner of record.

(6) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(7) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(8) "Residential targeted area" means an area within an urban center that has been designated by the governing authority as a residential targeted area in accordance with this chapter.

(9) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(10) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.

**Sec. 2.** RCW 84.14.020 and 1999 c 132 s 1 are each amended to read as follows:

(1) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, for ten successive years beginning January 1 of the year immediately following the calendar year of issuance of the certificate of tax exemption eligibility. However, the exemption does not include the value of land or nonhousing-related improvements not qualifying under this chapter. When a local government adopts guidelines pursuant to RCW 84.14.030(2) and the qualifying dwelling units are each on separate parcels for the purpose of property taxation, the exemption may, at the local government's discretion, be limited to those dwelling units that meet the local guidelines.

(2) In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to the submission of the application required under this chapter. The incentive provided by this chapter is in addition to any other incentives, tax credits, grants, or other incentives provided by law.

(3) This chapter does not apply to increases in assessed valuation made by the assessor on nonqualifying portions of building and value of land nor to increases made by lawful order of a county board of equalization, the department of revenue, or a county, to a class of property throughout the county or specific area of the county to achieve the uniformity of assessment or appraisal required by law.

(4) At the conclusion of the ten-year exemption period, the new or rehabilitated housing cost shall be considered as new construction for the purposes of chapter 84.55 RCW.

**Sec. 3.** RCW 84.14.110 and 2001 c 185 s 1 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 value of the new housing construction, conversion, and rehabilitation improvements added to the rolls shall be considered as new construction for the purposes of chapter 84.55 RCW. 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.

Passed the House February 19, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 147

[Substitute Senate Bill 6264]

### BOXING, MARTIAL ARTS—CHIROPRACTORS AS LICENSED OFFICIALS

AN ACT Relating to chiropractors at boxing, kickboxing, and martial arts events; amending RCW 67.08.002, 67.08.090, and 67.08.100; and providing an effective date.

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

**Sec. 1.** RCW 67.08.002 and 1999 c 282 s 2 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) "Amateur" means a person who engages in athletic activities as a pastime and not as a professional.

(2) "Boxing" means a contest in which the contestants exchange blows with their fists, but does not include professional wrestling.

(3) "Chiropractor" means a person licensed under chapter 18.25 RCW as a doctor of chiropractic or under the laws of any jurisdiction in which that person resides.

(4) "Department" means the department of licensing.

~~((4))~~ (5) "Director" means the director of the department of licensing or the director's designee.

~~((5))~~ (6) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

~~((6))~~ (7) "Event physician" means the physician licensed under RCW 67.08.100 and who is responsible for the activities described in RCW 67.08.090.

~~((7))~~ (8) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

~~((8))~~ (9) "Gross receipts" means the amount received from the face value of all tickets sold and complimentary tickets redeemed.

~~((9))~~ (10) "Kickboxing" means a type of boxing in which blows are delivered with the hand and any part of the leg below the hip, including the foot.

~~((10))~~ (11) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, pankration, muay thai, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis.

~~((11))~~ (12) "Physician" means a person licensed under chapter 18.57, 18.36A, or 18.71 RCW as a physician or a person holding an osteopathic or allopathic physician license under the laws of any jurisdiction in which the person resides.

~~((12))~~ (13) "Professional" means a person who has received or competed for money or other articles of value for participating in an event.

~~((13))~~ (14) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

~~((14))~~ (15) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

**Sec. 2.** RCW 67.08.090 and 1999 c 282 s 6 are each amended to read as follows:

(1) Each contestant for boxing, kickboxing, or martial arts events shall be examined within twenty-four hours before the contest by an event physician licensed by the department. The event physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the event physician shall be permitted to participate in any event. Blank forms for event physicians' reports shall be provided by the department and all questions upon such blanks shall be answered in full. The event physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that an event physician be present at a wrestling event. The promoter shall pay the event physician present at a wrestling event. A boxing, kickboxing, or martial arts event may not be held unless an event physician licensed by the department is present throughout the event. In addition to the event physician, a chiropractor may be included as a licensed official at a boxing, kickboxing, or martial arts event. The promoter shall pay the chiropractor present at a boxing, kickboxing, or martial arts event.

(3) Any physician licensed under RCW 67.08.100 may be selected by the department as the event physician. The event physician present at any contest shall have authority to stop any event when in the event physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the event physician's duty to stop the event.



(4) The department may have a participant in a wrestling event examined by an event physician licensed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the event physician shall not be permitted to participate in the event.

(5) Each contestant for boxing, kickboxing, martial arts, or wrestling events may be subject to a random urinalysis or chemical test within twenty-four hours before or after a contest. An applicant or licensee who refuses or fails to submit to the urinalysis or chemical test is subject to disciplinary action under RCW 67.08.240. If the urinalysis or chemical test is positive for substances prohibited by rules adopted by the director, disciplinary action shall be taken under RCW 67.08.240.

**Sec. 3.** RCW 67.08.100 and 2001 c 246 s 1 are each amended to read as follows:

(1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspector; (g) judge; (h) timekeeper; (i) announcer; (j) event physician; (k) chiropractor; ~~(l)~~ referee; ~~((††))~~ (m) matchmaker; ~~((†††))~~ (n) kickboxer; and ~~((†††))~~ (o) martial arts participant.

(2) The application for the following types of licenses shall include a physical performed by a physician, as defined in RCW 67.08.002, which was performed by the physician with a time period preceding the application as specified by rule: (a) Boxer; (b) wrestling participant; (c) kickboxer; (d) martial arts participant; and (e) referee.

(3) An applicant for the following types of licenses for the sports of boxing, kickboxing, and martial arts shall provide annual proof of certification as having adequate experience, skill, and training from an organization approved by the department, including, but not limited to, the association of boxing commissions, the international boxing federation, the international boxing organization, the Washington state association of professional ring officials, the world boxing association, the world boxing council, or the world boxing organization for boxing officials, and the united full contact federation for kickboxing and martial arts officials: (a) Judge; (b) referee; (c) inspector; (d) timekeeper; or (e) other officials deemed necessary by the department.

(4) Any license may be revoked, suspended, or denied by the director for a violation of this chapter or a rule adopted by the director.

(5) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(6) The referees, judges, timekeepers, event physicians, chiropractors, and inspectors for any boxing, kickboxing, or martial arts event shall be designated by the department from among licensed officials.

(7) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

(8) 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. 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.

(9) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(10) A person may not be issued a license unless they are at least eighteen years of age.

(11) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies.

**NEW SECTION.** Sec. 4. This act takes effect January 1, 2003.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 148

[Engrossed Substitute Senate Bill 6665]

STATE ROUTE 167

AN ACT Relating to state route 167; and creating new sections.

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

**NEW SECTION.** Sec. I. The legislature finds that the expansion and realignment of state route 167, which has been designated as a highway of statewide significance, is of vital interest to the state's economy. To ensure the free movement of people and goods along this corridor is a transportation priority, and the department of transportation shall plan and design an improved and expanded corridor from its intersection with state route 405 in the north to a new terminus at the Port of Tacoma via proposed state route 509 in the south. At a minimum, the planning must include:

(I) Environmental permit processes must be conducted in accordance with the criteria, standards, timelines, and other processes developed by the transportation permit efficiency and accountability committee established under chapter 47.06C RCW, and may include watershed-based mitigation;

(2) Planning must be undertaken in preparation for the ultimate project to be designed and constructed using the design-build processes established under RCW 47.20.780 and 47.20.785. The cost-benefit analysis process and demand modeling tools provided in sections 401 through 406, chapter 5, Laws of 2002 may be used in this planning;

(3) Nothing in this section delays, restricts, or limits design, right-of-way purchase, planning, construction, or other work associated with state route 167 improvement projects which has already been completed or is ongoing. The design and plan process called for in this section shall be conducted in such a way as to integrate previous or ongoing work on projects associated with improving state route 167 to avoid delay to any such project.

NEW SECTION. **Sec. 2.** This act is null and void if new transportation revenues do not become law in 2002.

Passed the Senate February 18, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

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## CHAPTER 149

### [Engrossed House Bill 2901] UNEMPLOYMENT INSURANCE

AN ACT Relating to unemployment insurance; amending RCW 50.22.140, 50.22.150, 50.20.120, 50.24.010, 50.29.020, 50.29.025, 50.29.025, 50.29.010, 50.29.062, and 50.24.014; adding a new section to chapter 50.20 RCW; adding new sections to chapter 50.29 RCW; creating new sections; 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 50.22.140 and 2000 2nd sp.s. c 1 s 916 are each amended to read as follows:

(1) The employment security department is authorized to pay training benefits under RCW 50.22.150, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. For each fiscal year beginning after June 30, 2002, the commissioner may not obligate more than twenty million dollars annually in addition to any funds carried (~~over~~) forward from previous fiscal years. The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.

(2) After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty-four million dollars for training benefits under RCW 50.22.150 for individuals in

the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period.

**Sec. 2.** RCW 50.22.150 and 2000 c 2 s 8 are each amended to read as follows:

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

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

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

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection ~~((9))~~ (10) of this section;

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

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

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

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

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

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any

equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

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

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

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

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

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

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

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

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

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

(d) "Training program" means:

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

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

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection ~~((9))~~ (10) of this section;

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

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

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the

training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(5) Benefits shall be paid as follows:

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

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

(iii) For exhaustees eligible under subsection (1) of this section from industries listed under subsection (2)(a) of this section, for claims filed on or after June 30, 2002, but before January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

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

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

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

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

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training

benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (1)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

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

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

~~((9))~~ (10) By July 1, 2001, each local work force development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations and skill sets that are in high demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local work force development councils must use state and locally developed labor market information. Thereafter, each local work force development council shall update this information annually or more frequently if needed.

~~((10))~~ (11) The commissioner shall adopt rules as necessary to implement this section.

NEW SECTION. Sec. 3. A new section is added to chapter 50.20 RCW to read as follows:

(1) From July 1, 2002, to June 30, 2004, the maximum amount payable weekly shall be four hundred ninety-six dollars.

(2) From July 1, 2004, to June 30, 2010, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th, except that the maximum amount payable weekly shall not increase by more than four percent each year. If growth in the average annual wage causes growth in the maximum amount payable weekly that exceeds four percent, then fifty percent of the growth rate that exceeds four percent shall be added to the maximum amount payable weekly in any of the subsequent three years. For years in which the potential recaptured growth rate exceeds the growth

rate needed to reach four percent, the excess recaptured growth rate is available to be added to the maximum amount payable weekly in the remaining years in the three-year period. Each year, the department shall add any excess recaptured growth rate to the maximum amount payable weekly. Remaining portions of the excess additional growth rate not applied within the three-year period shall lapse. The sum of the growth rate and the excess additional growth rate shall not exceed four percent.

(3) If the maximum amount payable weekly is less than seventy percent of the average weekly wage on June 30, 2010, it shall be restored to seventy percent of the average weekly wage using one of the following methods. The maximum amount payable weekly may be restored: (a) In equal increments in the four fiscal years ending on June 30, 2014; or (b) in increments which, together with the growth rate in the maximum amount payable weekly, do not exceed nine percent in each fiscal year. The applicable method is the method that restores the maximum amount payable weekly to seventy percent of the average weekly wage first.

**Sec. 4.** RCW 50.20.120 and 1993 c 483 s 12 are each amended to read as follows:

(1) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount (determined hereinafter) or one-third of the individual's base year wages under this title: **PROVIDED**, That as to any week beginning on and after March 31, 1981, which falls in an extended benefit period as defined in RCW 50.22.010(1), as now or hereafter amended, an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020, as now or hereafter amended.

(2) An individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest. The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th. Except as provided in section 3 of this act, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th. The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th. If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar.

**Sec. 5.** RCW 50.24.010 and 2000 c 2 s 2 are each amended to read as follows:

(1) Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make



payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

(2) In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars, except that:

(a) For employers assigned under RCW 50.29.025 to rate class 1 through 18, the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars. ~~((However, the amount subject to tax shall be twenty-four thousand three hundred dollars for rate year 2000.))~~

(b) For employers assigned under RCW 50.29.025 to rate class 19 through 20E, and contribution paying employers not qualified to be in the array under RCW 50.29.025(6), the amount of wages subject to tax:

(i) For rate year 2003, shall not exceed eighty-five percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars.

(ii) For rate year 2004 and thereafter, shall not exceed ninety percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars.

(3) In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: PROVIDED, FURTHER, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

(4)(a) Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

(b) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

**Sec. 6.** RCW 50.29.020 and 2000 c 2 s 3 are each amended to read as follows:

(1) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who

are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

~~((f) Benefits paid under RCW 50.22.150 shall not be charged to the experience rating account of any contribution paying employer.))~~

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

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

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

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

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

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

**Sec. 7.** RCW 50.29.025 and 2000 c 2 s 4 are each amended to read as follows:

The contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this section.

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

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year, except that during rate year 2004 tax schedule C shall be in effect unless a lower tax schedule is determined to be in effect by the interval of the fund balance ratio. The intervals for determining the effective tax schedule shall be:

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

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

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5)(a) Except as provided in RCW 50.29.026 and sections 9 and 10 of this act, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

		((Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule						
		Rate								
From	To	Class	AA	A	B	C	D	E	F	
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47	
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67	
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87	
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98	
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08	
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18	
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27	
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47	
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66	
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86	
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95	
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15	
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34	
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54	
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63	
75.01	80.00	16	2.87	3.09	3.69	3.81	4.22	4.53	4.73	
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97	
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17	
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40))	

		Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule						
		Rate								
From	To	Class	AA	A	B	C	D	E	F	
0.00	5.00	1	0.47	0.47	0.62	1.02	1.47	1.87	2.47	

<u>5.01</u>	<u>10.00</u>	<u>2</u>	<u>0.47</u>	<u>0.47</u>	<u>0.82</u>	<u>1.22</u>	<u>1.67</u>	<u>2.07</u>	<u>2.67</u>
<u>10.01</u>	<u>15.00</u>	<u>3</u>	<u>0.57</u>	<u>0.57</u>	<u>1.02</u>	<u>1.42</u>	<u>1.77</u>	<u>2.27</u>	<u>2.87</u>
<u>15.01</u>	<u>20.00</u>	<u>4</u>	<u>0.57</u>	<u>0.73</u>	<u>1.16</u>	<u>1.56</u>	<u>1.90</u>	<u>2.40</u>	<u>2.98</u>
<u>20.01</u>	<u>25.00</u>	<u>5</u>	<u>0.72</u>	<u>0.92</u>	<u>1.30</u>	<u>1.70</u>	<u>2.09</u>	<u>2.59</u>	<u>3.08</u>
<u>25.01</u>	<u>30.00</u>	<u>6</u>	<u>0.91</u>	<u>1.11</u>	<u>1.49</u>	<u>1.89</u>	<u>2.29</u>	<u>2.69</u>	<u>3.18</u>
<u>30.01</u>	<u>35.00</u>	<u>7</u>	<u>1.00</u>	<u>1.29</u>	<u>1.69</u>	<u>2.08</u>	<u>2.48</u>	<u>2.88</u>	<u>3.27</u>
<u>35.01</u>	<u>40.00</u>	<u>8</u>	<u>1.19</u>	<u>1.48</u>	<u>1.88</u>	<u>2.27</u>	<u>2.67</u>	<u>3.07</u>	<u>3.47</u>
<u>40.01</u>	<u>45.00</u>	<u>9</u>	<u>1.37</u>	<u>1.67</u>	<u>2.07</u>	<u>2.47</u>	<u>2.87</u>	<u>3.27</u>	<u>3.66</u>
<u>45.01</u>	<u>50.00</u>	<u>10</u>	<u>1.56</u>	<u>1.86</u>	<u>2.26</u>	<u>2.66</u>	<u>3.06</u>	<u>3.46</u>	<u>3.86</u>
<u>50.01</u>	<u>55.00</u>	<u>11</u>	<u>1.84</u>	<u>2.14</u>	<u>2.45</u>	<u>2.85</u>	<u>3.25</u>	<u>3.66</u>	<u>3.95</u>
<u>55.01</u>	<u>60.00</u>	<u>12</u>	<u>2.03</u>	<u>2.33</u>	<u>2.64</u>	<u>3.04</u>	<u>3.44</u>	<u>3.85</u>	<u>4.15</u>
<u>60.01</u>	<u>65.00</u>	<u>13</u>	<u>2.22</u>	<u>2.52</u>	<u>2.83</u>	<u>3.23</u>	<u>3.64</u>	<u>4.04</u>	<u>4.34</u>
<u>65.01</u>	<u>70.00</u>	<u>14</u>	<u>2.40</u>	<u>2.71</u>	<u>3.02</u>	<u>3.43</u>	<u>3.83</u>	<u>4.24</u>	<u>4.54</u>
<u>70.01</u>	<u>75.00</u>	<u>15</u>	<u>2.68</u>	<u>2.90</u>	<u>3.21</u>	<u>3.62</u>	<u>4.02</u>	<u>4.43</u>	<u>4.63</u>
<u>75.01</u>	<u>80.00</u>	<u>16</u>	<u>2.87</u>	<u>3.09</u>	<u>3.42</u>	<u>3.81</u>	<u>4.22</u>	<u>4.53</u>	<u>4.73</u>
<u>80.01</u>	<u>85.00</u>	<u>17</u>	<u>3.27</u>	<u>3.47</u>	<u>3.77</u>	<u>4.17</u>	<u>4.57</u>	<u>4.87</u>	<u>4.97</u>
<u>85.01</u>	<u>90.00</u>	<u>18</u>	<u>3.67</u>	<u>3.87</u>	<u>4.17</u>	<u>4.57</u>	<u>4.87</u>	<u>4.97</u>	<u>5.17</u>
<u>90.01</u>	<u>95.00</u>	<u>19</u>	<u>4.10</u>	<u>4.30</u>	<u>4.60</u>	<u>5.00</u>	<u>5.10</u>	<u>5.20</u>	<u>5.40</u>
<u>95.01</u>	<u>100.00</u>	<u>20</u>							
		<u>20A</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.55</u>	<u>5.60</u>
		<u>20B</u>	<u>5.40</u>	<u>5.45</u>	<u>5.50</u>	<u>5.55</u>	<u>5.60</u>	<u>5.65</u>	<u>5.70</u>
		<u>20C</u>	<u>5.50</u>	<u>5.55</u>	<u>5.60</u>	<u>5.65</u>	<u>5.70</u>	<u>5.75</u>	<u>5.80</u>
		<u>20D</u>	<u>5.60</u>	<u>5.65</u>	<u>5.70</u>	<u>5.75</u>	<u>5.80</u>	<u>5.85</u>	<u>5.90</u>
		<u>20E</u>	<u>5.70</u>	<u>5.75</u>	<u>5.80</u>	<u>5.85</u>	<u>5.90</u>	<u>5.95</u>	<u>6.00</u>

(b) Employers assigned to rate class 20 shall be assigned to one of the rate classes 20A through E as follows:

(i) Employers with a benefit ratio of less than 0.054000 shall be assigned to rate class 20A;

(ii) Employers with a benefit ratio of at least 0.054000 but less than 0.063000 shall be assigned to rate class 20B;

(iii) Employers with a benefit ratio of at least 0.063000 but less than 0.068000 shall be assigned to rate class 20C;

(iv) Employers with a benefit ratio of at least 0.068000 but less than 0.075000 shall be assigned to rate class 20D; and

(v) Employers with a benefit ratio of 0.075000 or higher shall be assigned to rate class 20E.

(c) The maximum contribution rate for employers whose standard industrial classification code is within major group "01," "02," or "07," or is code "5148," or the equivalent code in the North American industry classification system code, may not exceed the rate in rate class 20A for the applicable rate year.

(6) Except as provided in sections 9 and 10 of this act, the contribution rate for each employer not qualified to be in the array shall be as follows:

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

employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20E for the applicable rate year; and

(b) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code.

**Sec. 8.** RCW 50.29.025 and 2000 c 2 s 4 are each amended to read as follows:

The contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this section.

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

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

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

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

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5)(a) Except as provided in RCW 50.29.026 and sections 9 and 10 of this act, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

		((Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule							
		Rate									
From	To	Class	AA	A	B	C	D	E	F		
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47		
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67		
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87		
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98		
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08		
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18		
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27		
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47		
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66		
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86		
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95		
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15		
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34		
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54		
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63		
75.01	80.00	16	2.87	3.09	3.39	3.81	4.22	4.53	4.73		
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97		
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97		
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37		
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40))		

		Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule							
		Rate									
From	To	Class	AA	A	B	C	D	E	F		
<u>0.00</u>	<u>5.00</u>	<u>1</u>	<u>0.47</u>	<u>0.47</u>	<u>0.62</u>	<u>1.02</u>	<u>1.47</u>	<u>1.87</u>	<u>2.47</u>		
<u>5.01</u>	<u>10.00</u>	<u>2</u>	<u>0.47</u>	<u>0.47</u>	<u>0.82</u>	<u>1.22</u>	<u>1.67</u>	<u>2.07</u>	<u>2.67</u>		
<u>10.01</u>	<u>15.00</u>	<u>3</u>	<u>0.57</u>	<u>0.57</u>	<u>1.02</u>	<u>1.42</u>	<u>1.77</u>	<u>2.27</u>	<u>2.87</u>		
<u>15.01</u>	<u>20.00</u>	<u>4</u>	<u>0.57</u>	<u>0.73</u>	<u>1.14</u>	<u>1.54</u>	<u>1.90</u>	<u>2.40</u>	<u>2.98</u>		
<u>20.01</u>	<u>25.00</u>	<u>5</u>	<u>0.72</u>	<u>0.92</u>	<u>1.30</u>	<u>1.70</u>	<u>2.09</u>	<u>2.59</u>	<u>3.08</u>		
<u>25.01</u>	<u>30.00</u>	<u>6</u>	<u>0.91</u>	<u>1.03</u>	<u>1.44</u>	<u>1.89</u>	<u>2.29</u>	<u>2.69</u>	<u>3.18</u>		
<u>30.01</u>	<u>35.00</u>	<u>7</u>	<u>1.00</u>	<u>1.17</u>	<u>1.61</u>	<u>2.08</u>	<u>2.48</u>	<u>2.88</u>	<u>3.27</u>		
<u>35.01</u>	<u>40.00</u>	<u>8</u>	<u>1.19</u>	<u>1.35</u>	<u>1.79</u>	<u>2.27</u>	<u>2.67</u>	<u>3.07</u>	<u>3.47</u>		
<u>40.01</u>	<u>45.00</u>	<u>9</u>	<u>1.37</u>	<u>1.52</u>	<u>1.97</u>	<u>2.47</u>	<u>2.87</u>	<u>3.27</u>	<u>3.66</u>		
<u>45.01</u>	<u>50.00</u>	<u>10</u>	<u>1.56</u>	<u>1.69</u>	<u>2.15</u>	<u>2.66</u>	<u>3.06</u>	<u>3.46</u>	<u>3.86</u>		
<u>50.01</u>	<u>55.00</u>	<u>11</u>	<u>1.84</u>	<u>1.95</u>	<u>2.33</u>	<u>2.85</u>	<u>3.25</u>	<u>3.66</u>	<u>3.95</u>		
<u>55.01</u>	<u>60.00</u>	<u>12</u>	<u>2.03</u>	<u>2.12</u>	<u>2.51</u>	<u>3.04</u>	<u>3.44</u>	<u>3.85</u>	<u>4.15</u>		

<u>60.01</u>	<u>65.00</u>	<u>13</u>	<u>2.22</u>	<u>2.29</u>	<u>2.69</u>	<u>3.23</u>	<u>3.64</u>	<u>4.04</u>	<u>4.34</u>
<u>65.01</u>	<u>70.00</u>	<u>14</u>	<u>2.40</u>	<u>2.47</u>	<u>2.87</u>	<u>3.43</u>	<u>3.83</u>	<u>4.24</u>	<u>4.54</u>
<u>70.01</u>	<u>75.00</u>	<u>15</u>	<u>2.64</u>	<u>2.68</u>	<u>3.05</u>	<u>3.62</u>	<u>4.02</u>	<u>4.43</u>	<u>4.63</u>
<u>75.01</u>	<u>80.00</u>	<u>16</u>	<u>2.81</u>	<u>2.87</u>	<u>3.25</u>	<u>3.81</u>	<u>4.22</u>	<u>4.53</u>	<u>4.73</u>
<u>80.01</u>	<u>85.00</u>	<u>17</u>	<u>3.27</u>	<u>3.30</u>	<u>3.58</u>	<u>4.17</u>	<u>4.57</u>	<u>4.87</u>	<u>4.97</u>
<u>85.01</u>	<u>90.00</u>	<u>18</u>	<u>3.67</u>	<u>3.87</u>	<u>4.17</u>	<u>4.57</u>	<u>4.87</u>	<u>4.97</u>	<u>5.17</u>
<u>90.01</u>	<u>95.00</u>	<u>19</u>	<u>4.10</u>	<u>4.30</u>	<u>4.60</u>	<u>5.00</u>	<u>5.10</u>	<u>5.20</u>	<u>5.40</u>
<u>95.01</u>	<u>100.00</u>	<u>20</u>							
		<u>20A</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.40</u>	<u>5.55</u>	<u>5.60</u>
		<u>20B</u>	<u>5.40</u>	<u>5.45</u>	<u>5.50</u>	<u>5.55</u>	<u>5.60</u>	<u>5.65</u>	<u>5.70</u>
		<u>20C</u>	<u>5.50</u>	<u>5.55</u>	<u>5.60</u>	<u>5.65</u>	<u>5.70</u>	<u>5.75</u>	<u>5.80</u>
		<u>20D</u>	<u>5.60</u>	<u>5.65</u>	<u>5.70</u>	<u>5.75</u>	<u>5.80</u>	<u>5.85</u>	<u>5.90</u>
		<u>20E</u>	<u>5.70</u>	<u>5.75</u>	<u>5.80</u>	<u>5.85</u>	<u>5.90</u>	<u>5.95</u>	<u>6.00</u>

(b) Employers assigned to rate class 20 shall be assigned to one of the rate classes 20A through E as follows:

(i) Employers with a benefit ratio of less than 0.054000 shall be assigned to rate class 20A;

(ii) Employers with a benefit ratio of at least 0.054000 but less than 0.063000 shall be assigned to rate class 20B;

(iii) Employers with a benefit ratio of at least 0.063000 but less than 0.068000 shall be assigned to rate class 20C;

(iv) Employers with a benefit ratio of at least 0.068000 but less than 0.075000 shall be assigned to rate class 20D; and

(v) Employers with a benefit ratio of 0.075000 or higher shall be assigned to rate class 20E.

(c) The maximum contribution rate for employers whose standard industrial classification code is within major group "01," "02," or "07," or is code "5148," or the equivalent code in the North American industry classification system code, may not exceed the rate in rate class 20A for the applicable rate year.

(6) Except as provided in sections 9 and 10 of this act, the contribution rate for each employer not qualified to be in the array shall be as follows:

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

(b) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of



management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code.

**NEW SECTION. Sec. 9.** A new section is added to chapter 50.29 RCW to read as follows:

For rate years 2003 and 2004, the contribution rate of each employer subject to contributions under RCW 50.24.010 shall include, in addition to the contribution rate under RCW 50.29.025, an insolvency surcharge of fifteen one-hundredths of one percent. However, the insolvency surcharge is not in effect:

(1) For rate year 2003, if, before January 1, 2003, federal Reed act moneys are transferred to the account of this state pursuant to section 903 of the social security act (42 U.S.C. Sec. 1103), as amended, in an amount equal to or greater than fifteen one-hundredths of one percent multiplied by the amount of total taxable payroll for fiscal year 2002.

(2) For rate year 2004, if the fund balance ratio under RCW 50.29.025 is equal to or greater than 1.40 on September 30, 2003.

**NEW SECTION. Sec. 10.** A new section is added to chapter 50.29 RCW to read as follows:

(1) Beginning with contributions assessed for rate year 2005, the contribution rate of each employer subject to contributions under RCW 50.24.010 shall include, in addition to the contribution rate under RCW 50.29.025, an equity surcharge as determined under this section if the employer's experience rating account has ineffective charges in at least three of the four completed fiscal years immediately preceding the computation date. The commissioner shall determine the equity surcharge rate for a rate year for each applicable employer as follows:

(a) If the employer's net ineffective charges are equal to or less than zero, no equity surcharge is applicable to the employer. If the employer's net ineffective charges are greater than zero, an equity surcharge is applicable to the employer.

(b) An employer's equity surcharge rate for a rate year is equal to the net ineffective charges divided by the employer's taxable payroll, expressed as a percentage.

(2) The equity surcharge may not exceed four-tenths of one percent, except that for any given rate year the maximum surcharge is six-tenths of one percent if the commissioner determines that the total ineffective charges in the completed fiscal year immediately preceding the computation date is greater than fifteen percent of the total benefits paid in that fiscal year.

(3) This section does not apply to an employer in rate class 20A through 20E whose assigned standard industrial classification code is within major group "09" or is "203," or the equivalent codes in the North American industry classification system code.

(4) For purposes of this section:

(a) "Ineffective charges" means the dollar amount charged in the previous four completed fiscal years to an employer's experience rating account attributable to

unemployment benefits paid to claimants that exceed the contributions paid by the respective employer in those four fiscal years.

(b) "Net ineffective charges" means the sum of the employer's ineffective charges as defined in (a) of this subsection reduced by the employer's estimated contributions.

(c) "Estimated contributions" means the employer's taxable payroll multiplied by the employer's contribution rate assigned under RCW 50.29.025 for the next applicable rate year.

(d) "Taxable payroll" means the amount of wages subject to tax for the employer as determined under RCW 50.24.010 in the completed fiscal year immediately preceding the computation date.

**Sec. 11.** RCW 50.29.010 and 1987 c 213 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Computation date" means July 1st of any year;

(2) "Cut-off date" means September 30th next following the computation date;

(3) "Qualification date" means April 1st of the ~~((third))~~ second year preceding the computation date;

(4) "Rate year" means the calendar year immediately following the computation date;

(5) "Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his or her employment;

(6) "Qualified employer" means any employer who ~~((+))~~ (a) reported some employment in the twelve-month period beginning with the qualification date, ~~((2))~~ (b) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and ~~((3))~~ (c) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties may be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest from employment defined under RCW 50.04.160 may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable.

**Sec. 12.** RCW 50.29.062 and 1996 c 238 s 1 arc each amended to read as follows:

Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) If the successor is not an employer at the time of the transfer, it shall pay contributions at the lowest rate determined under either of the following:

(a)(i) For transfers before January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right;

(ii) For transfers on or after January 1, 1997, (i) the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1 following the transfer, the successor's contribution rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification code system.

(3) If the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(4) If the successor is not an employer at the time of the transfer, the taxable wage base applicable to the predecessor employer at the time of the transfer shall continue to apply to the successor employer for the remainder of the rate year in which the transfer occurs.

(5) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

~~((5))~~ (6) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on its experience

with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

In addition to contributions at rates computed under this section, predecessor and successor employers are subject to contributions under rates computed as provided in sections 9 and 10 of this act.

**Sec. 13.** RCW 50.24.014 and 2000 c 2 s 15 are each amended to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 (~~and~~), the costs under RCW 50.22.150(9), and the administrative cost under chapter . . . , Laws of 2002 (this act). Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(6)(b), and those qualified employers assigned one of the rate classes 20A through 20E under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. (~~Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.~~)

(c) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes of conducting an evaluation of the call center approach to unemployment insurance under section 5, chapter 161, Laws of 1998. During the

1997-1999 fiscal biennium, any surplus from contributions payable under this subsection (c) may be deposited in the unemployment compensation trust fund, used to support tax and wage automated systems projects that simplify and streamline employer reporting, or both.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

***\*NEW SECTION. Sec. 14. (1) There is hereby created a joint task force on unemployment insurance, composed of the following members:***

***(a) Four members of the senate labor, commerce and financial institutions committee, two from each of the major caucuses, to be appointed by the president of the senate;***

***(b) Four members of the house of representatives commerce and labor committee, two from each of the major caucuses, to be appointed by the speaker of the house of representatives;***

***(c) At least one legislative member from each house of the legislature shall represent a district east of the Cascade mountains; and***

***(d) Up to eight members appointed jointly by the president of the senate and the speaker of the house of representatives, representing business and labor in equal numbers. The business representatives shall be selected from nominations submitted by statewide business organizations, representing a cross-section of industries. The labor representatives shall be selected from nominations submitted by statewide labor organizations representing a cross-section of industries. Business and labor members shall include at least one person representing each of the following industries or economic sectors: Aerospace, construction, agriculture, small business, information technology, and retail.***

***(2) The employment security department unemployment insurance advisory committee shall provide administrative, technical, and clerical assistance to the joint task force on unemployment insurance.***

***(3) The senate committee services and the office of program research shall provide the staff support as mutually agreed by the cochairs of the joint task force on unemployment insurance. The task force shall designate the cochairs.***

***(4) The members of the joint task force on unemployment insurance shall not be compensated but the legislative members may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. The task force shall***

*minimize travel costs, and shall meet only in Olympia or Lacey, Washington. Other meetings and conferences that may be deemed necessary shall be held by teleconference or written submittal, which may be via e-mail.*

*(5) The joint task force on unemployment insurance shall appoint a technical advisory committee to assist in the development of legislative proposals and recommendations. Representatives of small business, construction industry, aerospace, information technology, agriculture, and retail shall be included on the technical advisory committee, on an ad hoc basis. Business and labor, and rural and urban interests shall all be represented.*

*(6) The joint task force on unemployment insurance shall study the following issues:*

*(a) Tax equity proposals, including tax rates and distribution of tax effects;*

*(b) Social costs;*

*(c) Improvement in administrative costs and efficiencies;*

*(d) Experience rating systems;*

*(e) Effectiveness of the implementation of this act in achieving equity;*

*(f) Trust fund adequacy, including examination of establishment of an earmarked state trust fund managed by the Washington state investment board;*

*(g) The effect of this act upon business insolvency rates in Washington state;*

*(h) Ways to reduce any inequitable effects of noncharged benefits caused by statutory individual benefits on the employer unemployment insurance burden. For purposes of this section, "individual benefits" means benefits paid to individuals who are considered to have left work voluntarily for good cause under RCW 50.20.050(2);*

*(i) Benefit structure and costs, including the improved direction of benefits to those in need;*

*(j) Analysis to improve understanding of the high rate of employer turnover in Washington state; and*

*(k) Any other issues deemed appropriate by the task force.*

*(7) The joint task force on unemployment insurance shall report its findings and make recommendations to the legislature by December 31, 2003. In the event that the task force is divided regarding an issue that is subject to a recommendation, the task force, with the assistance of the technical advisory committee, will articulate and submit more than one proposal or option for legislative consideration.*

*\*Sec. 14 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 15.** 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. 16.** 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. 17.** (1) Section 3 of this act applies beginning with claims that have an effective date on or after July 7, 2002.

(2) Sections 5 and 7 of this act apply to rate years beginning on or after January 1, 2003.

(3) Section 6 of this act applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after July 7, 2002.

(4) Section 8 of this act applies to rate years beginning on or after January 1, 2005.

**NEW SECTION. Sec. 18.** (1) Sections 7 and 9 of this act expire January 1, 2005.

(2) Section 3 of this act expires July 1, 2014.

**NEW SECTION. Sec. 19.** (1) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

(2) Section 8 of this act takes effect January 1, 2005.

Passed the House March 14, 2002.

Passed the Senate March 13, 2002.

Approved by the Governor March 26, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2002.

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

"I am returning herewith, without my approval as to section 14, Engrossed House Bill No. 2901 entitled:

"AN ACT Relating to unemployment insurance;"

Engrossed House Bill No. 2901 makes substantive changes to the unemployment insurance (UI) tax system that will be phased in over the next several years. Many of the reforms are based on a 1998 study conducted by the Employment Security Department.

Section 14 of the bill would have created a 16-member task force comprised of legislators, business and labor representatives to further study the UI system, and issue a report by December 31, 2003. Topics for the study included tax equity proposals, benefit structure and costs, experience rating, and any other issues deemed appropriate by the task force.

The task force would have been asked to report on issues covered by EHB 2901, prior to the full implementation of the bill, and before the full effectiveness of the act could be properly measured.

For these reasons, I have vetoed section 14 of Engrossed House Bill No. 2901.  
With the exception of section 14, Engrossed House Bill No. 2901 is approved."

## CHAPTER 150

[House Bill 2641]

### BUSINESS AND OCCUPATION TAX—DEDUCTIONS

AN ACT Relating to implementing the recommendations of the investment income tax deduction task force for the business and occupation tax; amending RCW 82.04.4281; creating a new section; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The legislature finds that the application of the business and occupation tax deductions provided in RCW 82.04.4281 for investment income of persons deemed to be "other financial businesses" has been the subject of uncertainty, and therefore, disagreement and litigation between taxpayers and the state. The legislature further finds that the decision of the state supreme court in *Simpson Investment Co. v. Department of Revenue* could lead to a restrictive, narrow interpretation of the deductibility of investment income for business and occupation tax purposes. As a result, the legislature directed the department of revenue to work with affected businesses to develop a revision of the statute that would provide certainty and stability for taxpayers and the state. The legislature intends, by adopting this recommended revision of the statute, to provide a positive environment for capital investment in this state, while continuing to treat similarly situated taxpayers fairly.

**Sec. 2.** RCW 82.04.4281 and 1980 c 37 s 2 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax:

(a) ~~Amounts derived ((by persons, other than those engaging in banking, loan, security, or other financial businesses,)) from investments ((or the use of money as such, and also));~~

(b) Amounts derived as dividends or distributions from capital account by a parent from its subsidiary ((corporations)) entities; and

(c) Amounts derived from interest on loans between subsidiary entities and a parent entity or between subsidiaries of a common parent entity, but only if the total investment and loan income is less than five percent of gross receipts of the business annually.

(2) The following are not deductible under subsection (1)(a) of this section:

(a) Amounts received from loans, except as provided in subsection (1)(c) of this section, or the extension of credit to another, revolving credit arrangements, installment sales, the acceptance of payment over time for goods or services, or any of the foregoing that have been transferred by the originator of the same to an affiliate of the transferor; or

(b) Amounts received by a banking, lending, or security business.

(3) The definitions in this subsection apply only to this section.



(a) "Banking business" means a person engaging in business as a national or state-chartered bank, a mutual savings bank, a savings and loan association, a trust company, an alien bank, a foreign bank, a credit union, a stock savings bank, or a similar entity that is chartered under Title 30, 31, 32, or 33 RCW, or organized under Title 12 U.S.C.

(b) "Lending business" means a person engaged in the business of making secured or unsecured loans of money, or extending credit, and (i) more than one-half of the person's gross income is earned from such activities and (ii) more than one-half of the person's total expenditures are incurred in support of such activities.

(c) The terms "loan" and "extension of credit" do not include ownership of or trading in publicly traded debt instruments, or substantially equivalent instruments offered in a private placement.

(d) "Security business" means a person, other than an issuer, who is engaged in the business of effecting transactions in securities as a broker, dealer, or broker-dealer, as those terms are defined in the securities act of Washington, chapter 21.20 RCW or the federal securities act of 1933. "Securit business," does not include any company excluded from the definition of broker or dealer under the federal investment company act of 1940 or any entity that is not an investment company by reason of sections 3(c)(1) and 3(c)(3) through 3(c)(14) thereof.

NEW SECTION. Sec. 3. This act takes effect July 1, 2002.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 151

[Substitute House Bill 2736]

### HIGHER EDUCATION—RESEARCH UNIVERSITIES

AN ACT Relating to research by state universities; amending RCW 28B.10.022 and 39.94.040; and adding a new chapter to Title 28B RCW.

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

NEW SECTION. Sec. 1. It is the policy of the state to encourage basic and applied scientific research by the state's research universities. The creation of knowledge is a core mission of the state's research universities, and research provides teaching and learning opportunities for students and faculty. State of the art facilities for research by research universities serve to attract the most capable students and faculty to the state and research grants from public and private institutions throughout the world. The application of such research stimulates investment and employment within Washington and the strengthening of our tax base. In order to finance research facilities, the state's research universities often use federal, state, private, and university resources and therefore require the

authority to enter into financing arrangements that leverage funding sources and reduce the costs of such complex facilities to the state.

**NEW SECTION.** **Sec. 2.** The University of Washington and Washington State University each may:

(1) Acquire, construct, rehabilitate, equip, and operate facilities and equipment to promote basic and applied research in the sciences;

(2) Borrow money for such research purposes, including interest during construction and other incidental costs, issue revenue bonds or other evidences of indebtedness, refinance the same before or at maturity, and provide for the amortization of such indebtedness by pledging all or a component of the fees and revenues of the university available for such purpose derived from the ownership and operation of any of its facilities or conducting research that are not subject to appropriation by the legislature and that do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution;

(3) Enter into leases, with or without an option to purchase, of real and personal property to be used in basic and applied research in the sciences; and

(4) Lease all or a portion of such facilities and equipment as is deemed prudent by the university to provide for research conducted by persons or entities that are not part of the university but that provide rental income to support university research facilities or provide opportunities for the interaction of public and private research and research personnel, including students and faculty.

**NEW SECTION.** **Sec. 3.** The governing body of a university financing facilities and equipment under this chapter shall give due regard to the costs of maintaining and operating such facilities and equipment during the useful lives of the facilities and equipment. No state appropriated funds may be used for (1) the payment of maintenance and operation of the facilities and equipment financed under this chapter; or (2) the grant or contract-supported research activities housed in these facilities. If funding through grants or contracts for research activities housed in these facilities is reduced, eliminated, or declared insufficient, the funding deficiencies are not a state obligation to be paid from the state general fund.

**NEW SECTION.** **Sec. 4.** The authority granted by this chapter is supplemental to any existing or future authority granted to the University of Washington and Washington State University and shall not be construed to limit the existing or future authority of these universities.

**Sec. 5.** RCW 28B.10.022 and 1989 c 356 s 6 are each amended to read as follows:

The boards of regents of the state universities and the boards of trustees of the regional universities, The Evergreen State College, and the state board for community and technical colleges (~~(education)~~), are severally authorized to enter into financing contracts as provided in chapter 39.94 RCW. Except as provided in this section, financing contracts shall be subject to the approval of the state

finance committee. Except for facilities financed under chapter 28B.--- RCW (sections 1 through 4 and 7 of this act), the board of regents of a state university may enter into financing contracts which are payable solely from and secured by all or any component of the fees and revenues of the university derived from its ownership and operation of its facilities not subject to appropriation by the legislature and not constituting "general state revenues," as defined in Article VIII, section 1 of the state Constitution, without the prior approval of the state finance committee. The board of regents shall notify the state finance committee at least sixty days prior to entering into such contract and provide information relating to such contract as requested by the state finance committee.

**Sec. 6.** RCW 39.94.040 and 1998 c 291 s 5 are each amended to read as follows:

(1) Except as provided in RCW 28B.10.022 and chapter 28B.--- RCW (sections 1 through 4 and 7 of this act), the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) The state may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency.

**NEW SECTION. Sec. 7.** Before January 31st of each year, the University of Washington and Washington State University must report to the ways and means committee of the senate and the capital budget committee of the house of representatives on the financing arrangements entered into under the authority of this chapter.

**NEW SECTION. Sec. 8.** Sections 1 through 4 and 7 of this act constitute a new chapter in Title 28B RCW.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 152

[Engrossed Substitute House Bill 1005]

RIGHTS OF WAY—AQUATIC LANDS

AN ACT Relating to public utility rights of way on aquatic lands; amending RCW 79.90.470; adding a new section to chapter 79.90 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands.

**Sec. 2.** RCW 79.90.470 and 1984 c 221 s 5 are each amended to read as follows:

(1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted (~~without charge~~) by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines. For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must

be deposited into the resource management cost account. Use for public parks or public recreation purposes shall be granted without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.90.450 through 79.90.460 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under section 3 of this act.

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines.

NEW SECTION. Sec. 3. A new section is added to chapter 79.90 RCW to read as follows:

(1) Until July 1, 2008, the charge for the term of an easement granted under RCW 79.90.470(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its reasonable direct administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "direct administrative costs" means the cost of hours worked directly on an application, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under RCW 79.90.470(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before the effective date of this section, as well as to applications submitted on or after the effective date of this section. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is the greater of: (a) Ten percent of the combined total of the easement charge and direct administrative costs; or (b) the cost of staff overtime, calculated at time and one-half, associated with the expedited processing.

**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 February 15, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 153

[Engrossed Second Substitute House Bill 2671]

### OFFICE OF PERMIT ASSISTANCE

AN ACT Relating to a permit assistance center within the department of ecology; adding new sections to chapter 43.131 RCW; adding a new chapter to Title 43 RCW; creating new sections; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that the health and safety of its citizens, natural resources, and the environment are vital interests of the state that must be protected to preserve the state's quality of life. The legislature also finds that the state's economic well-being is a vital interest that depends upon the development of fair, coordinated environmental permitting processes that ensure that the state not only protects natural resources but also encourages appropriate activities that stimulate growth and development. The legislature further finds that Washington's environmental protection programs have established strict standards to reduce pollution and protect public health and safety and the environment.

(2) The legislature also finds that, as the number of environmental and land use laws have grown in Washington, so have the number of permits required of

business and government. The increasing number of individual permits and permit agencies has generated the potential for conflict, overlap, and duplication among various state, local, and federal permits. Lack of coordination in the processing of project applications may cause costly delays and frustration to applicants.

(3) The legislature further finds that not all project applicants require the same type of assistance. Applicants with small projects may merely need information about local and state permits and assistance in applying for those permits, while intermediate-sized projects may require a facilitated permit process, and large complex projects may need extensive coordination among local, state, and federal agencies and tribal governments.

(4) The legislature, therefore, finds that a range of assistance and coordination options should be available to project applicants from a state office independent of any local, state, or federal permit agency. The legislature finds that citizens, businesses, and project applicants should be provided with:

(a) A reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that may apply to any given project;

(b) Facilitated interagency forums for discussion of significant issues related to the multiple permitting processes if needed for some project applicants; and

(c) Active coordination of all applicable regulatory and land use permitting procedures if needed for some project applicants.

(5) The legislature declares that the purpose of this chapter is to transfer the existing permit assistance center in the department of ecology to a new office of permit assistance in the office of financial management to:

(a) Assure that citizens, businesses, and project applicants will continue to be provided with vital information regarding environmental and land use laws and with assistance in complying with environmental and land use laws to promote understanding of these laws and to protect public health and safety and the environment;

(b) Ensure that facilitation of project permit decisions by permit agencies promotes both process efficiency and environmental protection;

(c) Allow for coordination of permit processing for large projects upon project applicants' request and at project applicants' expense to promote efficiency, ensure certainty, and avoid conflicts among permit agencies; and

(d) Provide these services through an office independent of any permit agency to ensure that any potential or perceived conflicts of interest related to providing these services or making permit decisions can be avoided.

(6) The legislature intends that establishing an office of permit assistance will provide these services without abrogating or limiting the authority of any permit agency to make decisions on permits that it issues. The legislature therefore declares that the office of permit assistance shall have authority to provide these services but shall not have any authority to make decisions on permits.

**NEW SECTION. Sec. 2.** (1) The office of permit assistance is created in the office of financial management and shall be administered by the office of the governor to assist citizens, businesses, and project applicants.

(2) The office shall:

- (a) Maintain and furnish information as provided in section 5 of this act;
- (b) Furnish facilitation as provided in section 6 of this act;
- (c) Furnish coordination as provided in section 7 of this act;
- (d) Coordinate cost reimbursement as provided in section 8 of this act;
- (e) Work with state agencies and local governments to continue to develop a range of permit assistance options for project applicants;
- (f) Review initiatives developed by the transportation permit efficiency and accountability committee established in chapter 47.06C RCW and determine if any would be beneficial if implemented for other types of projects;
- (g) Work to develop informal processes for dispute resolution between agencies and permit applicants;
- (h) Conduct customer surveys to evaluate its effectiveness; and
- (i) Provide the following biennial reports to the governor and the appropriate committees of the legislature:
  - (i) A performance report, based on the customer surveys required in (h) of this subsection;

(ii) A report on any statutory or regulatory conflicts identified by the office in the course of its duties that arise from differing legal authorities and roles of agencies and how these were resolved. The report may include recommendations to the legislature and to agencies; and

(iii) A report regarding use of outside independent consultants under section 8 of this act, including the nature and amount of work performed and implementation of requirements relating to costs.

(3) The office shall give priority to furnishing assistance to small projects when expending general fund moneys allocated to it.

**NEW SECTION. Sec. 3.** (1) The office shall operate on the principle that citizens of the state of Washington should receive the following information regarding permits:

- (a) A date and time for a decision on a permit;
- (b) The information required for an agency to make a decision on a permit, recognizing that changes in the project or other circumstances may change the information required; and
- (c) An estimate of the maximum amount of costs in fees, studies, or public processes that will be incurred by the project applicant.

(2) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

**NEW SECTION. Sec. 4.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.



(1) "Office" means the office of permit assistance in the office of financial management established in section 2 of this act.

(2) "Permit" means any permit, certificate, use authorization, or other form of governmental approval required in order to construct or operate a project in the state of Washington.

(3) "Permit agency" means any state or local agency authorized by law to issue permits.

(4) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(5) "Project applicant" means a citizen, business, or any entity seeking a permit or permits in the state of Washington.

**NEW SECTION. Sec. 5.** The office shall assist citizens, businesses, and project applicants by maintaining and furnishing information, including, but not limited to:

(1) To the extent possible, compiling and periodically updating one or more handbooks containing lists and explanations of permit laws, including all relevant local, state, federal, and tribal laws. In providing this information, the office shall seek the cooperation of relevant local, state, and federal agencies and tribal governments;

(2) Establishing and providing notice of a point of contact for obtaining information;

(3) Working closely and cooperatively with the business license center in providing efficient and nonduplicative service;

(4) Collecting and making available information regarding federal, state, local, and tribal government programs that rely on private professional expertise to assist agencies in project permit review; and

(5) Developing a call center and a web site.

**NEW SECTION. Sec. 6.** At the request of a project applicant, the office shall assist the project applicant in determining what regulatory requirements, processes, and permits apply to the project, as provided in this section.

(1) The office shall assign a project facilitator who shall discuss applicable regulatory requirements, permits, and processes with the project applicant and explain the available options for obtaining required permits.

(2) If the project applicant and the project facilitator agree that the project would benefit from a project scoping, the project facilitator shall conduct a project scoping by the project applicant and the relevant state and local permit agencies. The project facilitator shall invite the participation of the relevant federal permit agencies and tribal governments.

(a) The purpose of the project scoping is to identify the issues and information needs of the project applicant and the participating permit agencies regarding the project, share perspectives, and jointly develop a strategy for the processing of required permits by each participating permit agency.

(b) The scoping shall address:

- (i) The permits that are required for the project;
  - (ii) The permit application forms and other application requirements of the participating permit agencies;
  - (iii) The specific information needs and issues of concern of each participant and their significance;
  - (iv) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;
  - (v) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and
  - (vi) The anticipated time required for permit decisions by each participating permit agency, including the time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.
- (c) The outcome of the project scoping shall be documented in writing, furnished to the project applicant, and be made available to the public.
- (d) The project scoping shall be completed within sixty days of the project applicant's request for a project scoping.
- (e) Upon completion of the project scoping, the participating permit agencies shall proceed under their respective authority. The agencies are encouraged to remain in communication for purposes of coordination until their final permit decisions are made.

(3) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

**NEW SECTION.** **Sec. 7.** (1) The office may coordinate the processing by participating permit agencies of permits required for a project, at the request of the project applicant through a cost reimbursement agreement as provided in subsection (3) of this section or with the agreement of the project applicant as provided in subsection (4) of this section.

(2) The office shall assign a project coordinator to perform any or all of the following functions, as specified by the terms of a cost reimbursement agreement under subsection (3) of this section or an agreement under subsection (4) of this section:

- (a) Serve as the main point of contact for the project applicant;
- (b) Conduct a project scoping as provided in section 6(2) of this act;
- (c) Verify that the project applicant has all the information needed to complete applications;
- (d) Coordinate the permit processes of the permit agencies;
- (e) Manage the applicable administrative procedures;

(f) Work to assure that timely permit decisions are made by the permit agencies and maintain contact with the project applicant and the permit agencies to ensure adherence to schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions; and

(h) Coordinate with relevant federal permit agencies and tribal governments to the extent possible.

(3) At the request of a project applicant and as provided in section 8 of this act, the project coordinator shall coordinate negotiations among the project applicant, the office, and participating permit agencies to enter into a cost reimbursement agreement and shall coordinate implementation of the agreement, which shall govern coordination of permit processing by the participating permit agencies.

(4) The office may determine that it is in the public interest to coordinate the processing of permits for certain projects that are complex in scope, require multiple permits, involve multiple jurisdictions, or involve a significant number of affected parties. Upon such a determination, the office may enter into an agreement with the project applicant and the participating permit agencies to coordinate the processing of permits for the project. The office may limit the number of such agreements according to the resources available to the office and the permit agencies at the time.

**NEW SECTION.** Sec. 8. (1) The office may coordinate negotiation and implementation of a written agreement among the project applicant, the office, and participating permit agencies to recover from the project applicant the reasonable costs incurred by the office in carrying out the provisions of sections 6(2) and 7(2) of this act and by participating permit agencies in carrying out permit processing tasks specified in the agreement.

(2) The office may coordinate negotiation and implementation of a written agreement among the project applicant, the office, and participating permit agencies to recover from the project applicant the reasonable costs incurred by outside independent consultants selected by the office and participating permit agencies to perform permit processing tasks.

(3) Outside independent consultants may only bill for the costs of performing those permit processing tasks that are specified in a cost reimbursement agreement under this section. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The office shall adopt a policy to coordinate cost reimbursement agreements with outside independent consultants. Cost reimbursement agreements coordinated by the office under this section must be based on competitive bids that are awarded for each agreement from a prequalified consultant roster.

(5) Independent consultants hired under a cost reimbursement agreement, shall report directly to the permit agency. The office shall assure that final decisions are made by the permit agency and not by the consultant.

(6) The office shall develop procedures for determining, collecting, and distributing cost reimbursement for carrying out the provisions of this chapter.

(7) For a cost reimbursement agreement, the office and participating permit agencies shall negotiate a work plan and schedule for reimbursement. Prior to distributing scheduled reimbursement to the agencies, the office shall verify that the agencies have met the obligations contained in their work plan.

(8) Prior to commencing negotiations with the project applicant for a cost reimbursement agreement, the office shall request work load analyses from each participating permitting agency. These analyses shall be available to the public. The work load of a participating permit agency may only be modified with the concurrence of the agency and if there is both good cause to do so and no significant impact on environmental review.

(9) The office shall develop guidance to ensure that, in developing cost reimbursement agreements, conflicts of interest are eliminated.

(10) For project permit processes that it coordinates, the office shall coordinate the negotiation of all cost reimbursement agreements executed under RCW 43.21A.690, 43.30.420, 43.70.630, 43.300.080, and 70.94.085. The office and the permit agencies shall be signatories to the agreements. Each permit agency shall manage performance of its portion of the agreement.

(11) If a permit agency or the project applicant foresees, at any time, that it will be unable to meet its obligations under the cost reimbursement agreement, it shall notify the office and state the reasons. The office shall notify the participating permit agencies and the project applicant and, upon agreement of all parties, adjust the schedule, or, if necessary, coordinate revision of the work plan.

***\*NEW SECTION. Sec. 9. (1) There is established the permit assistance advisory council. The council shall:***

***(a) Assess the performance of the office;***

***(b) Review customer surveys conducted by the office to determine the effectiveness of the office; and***

***(c) Make recommendations for improving the performance of the office in carrying out the provisions of this chapter.***

***(2) The council shall be composed of eleven members.***

***(a) The governor shall appoint seven members, who shall reflect geographical balance and the diversity of population within Washington state. The governor shall include representation from business, the environmental community, agriculture, port districts, counties, cities, and the tribes.***

***(b) Two members shall be members of the senate selected by the president of the senate with one member selected from each caucus in the senate, and two members shall be members of the house of representatives selected by the speaker of the house of representatives with one member selected from each caucus in the house of representatives. The legislative members shall be nonvoting members of the council.***

*(3) Nonlegislative members shall serve four-year terms. Of the initial members appointed to the council, two shall serve for two years, two shall serve for three years, and three shall serve for four years. Thereafter members shall be appointed to four-year terms.*

*(4) Vacancies shall be filled by appointment in the same manner as the original appointment for the remainder of the unexpired term of the position being vacated.*

*(5) Nonlegislative members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed as provided in RCW 44.04.120.*

*(6) The council shall elect a chair and a vice-chair from the voting members. The chair and vice-chair shall serve a term of one year.*

*(7) The council shall meet at least four times per year.*

\*Sec. 9 was vetoed. Sec message at end of chapter.

**NEW SECTION. Sec. 10.** (1) The powers, duties, and functions of the permit assistance center at the department of ecology are transferred to the office created in section 2 of this act.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of ecology pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of ecology in carrying out the powers, functions, and duties transferred shall be made available to the office. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office.

(b) Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on June 30, 2002, be transferred and credited to the office.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office. All existing contracts and obligations shall remain in full force and shall be performed by the office.

(4) The transfer of the powers, duties, and functions of the permit assistance center shall not affect the validity of any act performed before the effective date of this act.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the

apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**NEW SECTION. Sec. 11.** Nothing in this chapter affects the jurisdiction of the energy facility site evaluation council under chapter 80.50 RCW.

**NEW SECTION. Sec. 12.** (1) Nothing in this chapter shall be construed to abrogate or diminish the functions, powers, or duties granted to any permit agency by law.

(2) Nothing in this chapter grants the office authority to decide if a permit shall be issued. The authority for determining if a permit shall be issued shall remain with the permit agency.

**NEW SECTION. Sec. 13.** A new section is added to chapter 43.131 RCW to read as follows:

The office of permit assistance established in section 2 of this act and its powers and duties shall be terminated June 30, 2007, as provided in section 14 of this act.

**NEW SECTION. Sec. 14.** A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2008:

- (1) Section 1 of this act;
- (2) Section 2 of this act;
- (3) Section 3 of this act;
- (4) Section 4 of this act;
- (5) Section 5 of this act;
- (6) Section 6 of this act;
- (7) Section 7 of this act;
- (8) Section 8 of this act;
- (9) Section 9 of this act;
- (10) Section 10 of this act;
- (11) Section 11 of this act; and
- (12) Section 12 of this act.

**NEW SECTION. Sec. 15.** The joint legislative and audit review committee shall work within its existing resources in conducting the sunset review for the office of permit assistance.

**NEW SECTION. Sec. 16.** Sections 1 through 12 of this act constitute a new chapter in Title 43 RCW.

**NEW SECTION. Sec. 17.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2002, in the omnibus appropriations act, this act is null and void.

***\*NEW SECTION. Sec. 18. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.***

**\*Sec. 18 was vetoed. See message at end of chapter.**

Passed the House March 13, 2002.

Passed the Senate March 13, 2002.

Approved by the Governor March 26, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2002.

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

"I am returning herewith, without my approval as to sections 9 and 18, Engrossed Second Substitute House Bill No. 2671 entitled:

"AN ACT Relating to a permit assistance center within the department of ecology;"

Engrossed Second Substitute House Bill No. 2671 establishes an office of permit assistance in the Office of Financial Management (OFM) to be administered by the Governor. The bill will move the permit assistance center currently in operation at the Department of Ecology (DOE) to OFM, and extend its reach.

Section 9 of the bill would have established an eleven-member advisory council to assess the performance of the permit assistance office, review customer surveys, and make performance improvement recommendations, among other things. However, no funding was provided in the budget to support the advisory council, and such a council is not essential. The new office will provide biennial reports to the governor and the legislature, and DOE will also be forming an advisory committee.

The emergency clause in section 18 of the bill has also been vetoed. OFM, the Governor's Office and DOE will need time to establish the new office.

For these reasons, I have vetoed sections 9 and 18 of Engrossed Second Substitute House Bill No. 2671.

With the exception of sections 9 and 18, Engrossed Second Substitute House Bill No. 2671 is approved."

## CHAPTER 154

[Second Substitute House Bill 2697]

### GROWTH MANAGEMENT—ECONOMIC DEVELOPMENT PLANNING

AN ACT Relating to incorporating effective economic development planning into growth management planning; and amending RCW 36.70A.020 and 36.70A.070.

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

**Sec. I.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each amended to read as follows:

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. ~~((Encourage the retention of))~~ Retain open space ~~((and development of))~~, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

Sec. 2. RCW 36.70A.070 and 1998 c 171 s 2 are each amended to read as follows:



The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve

those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdiction boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year

improvement program developed by the department of transportation as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.12I for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Passed the House March 14, 2002.

Passed the Senate March 14, 2002.

Approved by the Governor March 26, 2002.

Filed in Office of Secretary of State March 26, 2002.

## CHAPTER 155

[Engrossed Substitute Senate Bill 5264]

### PUBLIC EMPLOYERS—UNFAIR PRACTICES

AN ACT Relating to unfair practices by public employers with respect to eligibility for employment-based benefits; adding new sections to chapter 49.44 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 49.44 RCW to read as follows:

The legislature intends that public employers be prohibited from misclassifying employees, or taking other action to avoid providing or continuing to provide employment-based benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

This act does not mandate that any public employer provide benefits to actual temporary, seasonal, or part-time employees beyond the benefits to which they are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification. Public employers may determine eligibility rules for their own benefit plans and may exclude categories of workers such as "temporary" or "seasonal," so long as the definitions and eligibility rules are objective and applied on a consistent basis. Objective standards, such as control over the work and the length of the employment relationship, should determine whether a person is an employee who is entitled to employee benefits, rather than the arbitrary application of labels, such as "temporary" or "contractor." Common law standards should be used to determine whether a person is performing services as an employee, as a contractor, or as part of an agency relationship.

This act does not modify any statute or policy regarding the employment of: Public employee retirees who are hired for postretirement employment as provided for in chapter 41.26, 41.32, 41.35, or 41.40 RCW or who work as contractors; or enrolled students who receive employment as student employees or as part of their education or financial aid.

**NEW SECTION. Sec. 2.** A new section is added to chapter 49.44 RCW to read as follows:

(1) It is an unfair practice for any public employer to:

(a) Misclassify any employee to avoid providing or continuing to provide employment-based benefits; or

(b) Include any other language in a contract with an employee that requires the employee to forgo employment-based benefits.

(2) The definitions in this subsection apply throughout this act unless the context clearly requires otherwise.

(a) "Employee" 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. This definition shall be interpreted consistent with common law.

(b) "Employment-based benefits" means any benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

(c) "Public employer" means: (i) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and (ii) the state, state institutions, and state agencies. This definition shall be interpreted consistent with common law.

(d) "Misclassify" and "misclassification" means to incorrectly classify or label a long-term public employee as "temporary," "leased," "contract," "seasonal," "intermittent," or "part-time," or to use a similar label that does not objectively describe the employee's actual work circumstances.

(3) An employee deeming himself or herself harmed in violation of subsection (1) of this section may bring a civil action in a court of competent jurisdiction.

**NEW SECTION. Sec. 3.** This act shall be construed liberally for the accomplishment of its purposes.

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

Passed the Senate March 12, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 156

[Engrossed Senate Bill 6713]

### POLITICAL CONTRIBUTIONS—PAYROLL DEDUCTIONS

AN ACT Relating to voluntary payroll deductions; amending RCW 42.17.680; and providing an effective date.

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

**Sec. 1.** RCW 42.17.680 and 1993 c 2 s 8 are each amended to read as follows:

(1) No employer or labor organization may increase the salary of an officer or employee, or give an emolument to an officer, employee, or other person or entity, with the intention that the increase in salary, or the emolument, or a part of it, be contributed or spent to support or oppose a candidate, state official against whom recall charges have been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. At least annually, an employee from whom wages or salary are withheld under subsection (3) of this section shall be notified of the provisions of this subsection.

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. ~~((The request is valid for no more than twelve months from the date it is made by the employee.))~~ The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request.

**NEW SECTION.** Sec. 2. This act takes effect July 1, 2002.

Passed the Senate February 16, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 157

[Substitute Senate Bill 6037]

### VETERINARY SERVICES—ANIMAL CONTROL AGENCIES—HUMANE SOCIETIES

AN ACT Relating to authorizing animal care and control agencies and nonprofit humane societies to provide limited veterinarian services; adding new sections to chapter 18.92 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 18.92 RCW to read as follows:

The legislature recognizes that low-income households may not receive needed veterinary services for household pets. It is the intent of the legislature to allow qualified animal control agencies and humane societies to provide limited veterinary services to low-income members of our communities. It is not the intent of the legislature to allow these agencies to provide veterinary services to the public at large.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 18.92 RCW to read as follows:

(1)(a) Subject to the limitations in this section, animal care and control agencies as defined in RCW 16.52.011 and nonprofit humane societies, that have qualified under section 501(c)(3) of the internal revenue code may provide limited veterinary services to animals owned by qualified low-income households. The veterinary services provided shall be limited to electronic identification, surgical sterilization, and vaccinations. A veterinarian or veterinary technician acting within his or her scope of practice must perform the limited veterinary services. For purposes of this section, "low-income household" means the same as in RCW 43.185A.010.

(b) Animal control agencies and nonprofit humane societies, receiving animals on an emergency basis, may provide emergency care, subject to a local ordinance that defines an emergency situation and establishes temporary time limits.

(c) Any local ordinance addressing the needs under this section that was approved by the voters and is in effect on the effective date of this act remains in effect.

(2) Veterinarians and veterinary technicians employed at these facilities must be licensed under this chapter. No officer, director, supervisor, or any other individual associated with an animal care or control agency or nonprofit humane society owning and operating a veterinary medical facility may impose any terms or conditions of employment or direct or attempt to direct an employed veterinarian in any way that interferes with the free exercise of the veterinarian's professional judgment or infringes upon the utilization of his or her professional skills.

(3) Veterinarians, veterinary technicians, and animal control agencies and humane societies acting under this section shall, for purposes of providing the limited veterinary services, meet the requirements established under this chapter and are subject to the rules adopted by the veterinary board of governors in the same fashion as any licensed veterinarian or veterinary medical facility in the state.

(4) The Washington state veterinary board of governors shall adopt rules to:

(a) Establish registration and registration renewal requirements;

(b) Govern the purchase and use of drugs for the limited veterinary services authorized under this section; and

(c) Ensure that agencies and societies are in compliance with this section.

(5) The limited veterinary medical service authority granted by registration under this section may be denied, suspended, revoked, or conditioned by a determination of the board of governors for any act of noncompliance with this chapter. The uniform disciplinary act, chapter 18.130 RCW, governs unregistered operation, the issuance and denial of registrations, and the discipline of registrants under this section.

(6) No animal control agency or humane society may operate under this chapter without registering with the department. An application for registration shall be made upon forms provided by the department and shall include the information the department reasonably requires, as provided by RCW 43.70.280. The department shall establish registration and renewal fees as provided by RCW 43.70.250. A registration fee shall accompany each application for registration or renewal.

**NEW SECTION.** **Sec. 3.** This act takes effect July 1, 2003.

Passed the Senate March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 158

[Engrossed Senate Bill 6380]

### RETIREMENT SYSTEMS—BENEFIT OPTIONS

AN ACT Relating to creating new survivor benefit division options for divorced members of the law enforcement officers' and fire fighters' retirement system, the teachers' retirement system, the school employees' retirement system, the public employees' retirement system, and the Washington state patrol retirement system; amending RCW 41.26.160, 41.26.161, 41.26.162, 41.50.670, 41.50.700, 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845, 43.43.270, and 43.43.271; and adding a new section to chapter 41.26 RCW.

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

**Sec. 1.** RCW 41.26.160 and 1999 c 134 s 2 are each amended to read as follows:

(1) In the event of the duty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on duty connected disability leave or retired for duty connected disability, the surviving spouse shall become entitled, subject to RCW 41.26.162(2), to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for duty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: **PROVIDED**, That if the child or children is or are in the care of

a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the duty connected death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for duty connected disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: **PROVIDED**, That if a member dies as a result of a disability incurred in the line of duty, then if he or she was married at the time he or she was disabled, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's duty connected death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: **PROVIDED**, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of the member.

(5) If a surviving spouse receiving benefits under this section remarries after the effective date of this act, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

~~((6))~~ (7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

**Sec. 2.** RCW 41.26.161 and 1999 c 134 s 3 are each amended to read as follows:

(1) In the event of the nonduty connected death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on disability leave or

retired, whether for nonduty connected disability or service, the surviving spouse shall become entitled, subject to RCW 41.26.162(2), to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for service or nonduty connected disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), subject to a maximum combined allowance of sixty percent of final average salary: **PROVIDED**, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the member at the time of death over all payments made to survivors on his or her behalf under this chapter: **PROVIDED**, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under this section remarries after the effective date of this act, the surviving spouse shall continue to receive the benefits under this section.

(6) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

~~((6))~~ (7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date.

**Sec. 3.** RCW 41.26.162 and 1991 sp.s. c 12 s 2 are each amended to read as follows:

(1)~~(a)~~ An ex spouse of a law enforcement officers' and fire fighters' retirement system retiree shall qualify as surviving spouse under RCW 41.26.160 if the ex spouse:

~~((a))~~ (i) Has been provided benefits under any currently effective court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation entered after the member's retirement and prior to December 31, 1979; and

~~((b))~~ (ii) Was married to the retiree for at least thirty years, including at least twenty years prior to the member's retirement or separation from service if a vested member.

~~((2))~~ (b) If two or more persons are eligible for a surviving spouse benefit under this subsection, benefits shall be divided between the surviving spouses based on the percentage of total service credit the member accrued during each marriage.

~~((3))~~ (c) This ~~(section)~~ subsection shall apply retroactively.

(2)(a) An ex spouse of a law enforcement officers' and fire fighters' retirement system plan 1 retiree who:

(i) Divorces the member before separation from service; and

(ii) Entered into the court order or court-approved property settlement agreement incident to the divorce of the member and ex spouse after July 1, 2003; may be awarded a portion of the member's benefit and a portion of any spousal survivor's benefit pursuant to RCW 41.26.160 or 41.26.161 after the member's death if specified in the court order or court-approved property settlement.

(b) This subsection shall not apply retroactively.

(3)(a) An ex spouse of a law enforcement officers' and fire fighters' retirement system plan 1 member with at least thirty years of service who:

(i) Divorced the member after being married to the member for at least twenty-five years; and

(ii) Entered into a court order or court-approved property settlement agreement incident to the divorce that awarded a portion of the member's benefits to the ex spouse after the effective date of this act; shall continue to receive that portion of the member's benefit after the member's death as if the member was still alive.

(b) This subsection shall apply only to a divorce entered into after January 1, 1997. However, no payments shall be made to an ex spouse of a deceased member qualifying under this subsection for any period prior to the effective date of this section.

NEW SECTION. **Sec. 4.** A new section is added to chapter 41.26 RCW under subchapter heading "plan 1" to read as follows:

(1) No later than July 1, 2003, the department shall adopt rules to allow a member who meets the criteria set forth in subsection (2) of this section to choose an actuarially equivalent benefit that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161.

(2) To choose an actuarially equivalent benefit according to subsection (1) of this section, a member shall:

(a) Have the retirement allowance payable to the retiree not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670;

(b) Have no qualified ex spouse under RCW 41.26.162(1); and

(c) Choose an actuarially reduced benefit during a one-year period beginning one year after the date of marriage to the survivor benefit-ineligible spouse.

(3) A member who married a spouse ineligible for survivor benefits under RCW 41.26.160 or 41.26.161 prior to the effective date of the rules adopted under this section and satisfies the conditions of subsection (2)(a) and (b) of this section has one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(4) No benefit provided to a child survivor beneficiary under RCW 41.26.160 or 41.26.161 is affected or reduced by the member's selection of the actuarially reduced spousal survivor benefit provided by this section.

(5)(a) Any member who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiaries death shall be increased by the following:

(i) One hundred percent multiplied by the result of (b)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor.

**Sec. 5.** RCW 41.50.670 and 1998 c 341 s 513 are each amended to read as follows:

(1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation

ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, 41.26.053, ~~41.26.162~~, 41.32.052, 41.35.100, 41.34.070(~~(3)~~) (4), 41.40.052, 43.43.310, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.35, 41.34, 41.40, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If . . . . . (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to . . . . . (the obligee) . . . . . dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If . . . . . (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to . . . . . (the obligee) . . . . . dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders comply or are modified to comply with this section and RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052, 41.35.100, 41.34.070, 41.40.052, 43.43.310, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i).

**Sec. 6.** RCW 41.50.700 and 1991 c 365 s 16 are each amended to read as follows:

(1) Except under subsection (3) of this section, the department's obligation to provide direct payment of a property division obligation to an obligee under RCW 41.50.670 shall cease upon the death of the obligee or upon the death of the obligor, whichever comes first. However, if an obligor dies and is eligible for a lump sum death benefit, the department shall be obligated to provide direct payment to the obligee of all or a portion of the withdrawal of accumulated contributions pursuant to a court order that complies with RCW 41.50.670.

(2) The direct payment of a property division obligation to an obligee under RCW 41.50.670 shall be paid as a deduction from the member's periodic retirement payment. An obligee may not direct the department to withhold any funds from such payment.

(3) The department's obligation to provide direct payment to a nonmember ex spouse from a preretirement divorce meeting the criteria of RCW 41.26.162(2) or 43.43.270(2) may continue for the life of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2). Upon the death of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2), the department's obligation under this subsection shall cease. The department's obligation to provide direct payment to a nonmember ex spouse qualifying for a continued split benefit payment under RCW 41.26.162(3) shall continue for the life of that nonmember ex spouse.

**Sec. 7.** RCW 41.26.460 and 2000 c 186 s 1 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated



person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.26.530(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.26.430 and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division

into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 8.** RCW 41.32.530 and 2000 c 186 s 2 are each amended to read as follows:

(1) Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: PROVIDED, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree

is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.470 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.480(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The separate single life benefits of the member and the nonmember ex spouse are not (i) subject to the minimum benefit provisions of RCW 41.32.4851, or (ii) the minimum benefit annual increase amount eligibility provisions of RCW 41.32.489 (2)(b) and (3)(a).

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 9.** RCW 41.32.785 and 2000 c 186 s 4 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this

section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.815 and the member's

divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.765(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 10.** RCW 41.32.851 and 2000 c 186 s 5 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.32.875 or retirement for disability under RCW 41.32.880, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the retired member, all benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to such person or persons as the retiree shall have nominated by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and joint and fifty percent survivor option.

(2) ~~((A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both~~



~~the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section))~~ (a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty-percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.32.875(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.32.875(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 11.** RCW 41.35.220 and 2000 c 186 s 6 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.35.420 or 41.35.680 or retirement for disability under RCW 41.35.440 or 41.35.690, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. (~~However,~~)

(i) For members of plan 2, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(ii) For members of plan 3, upon the death of the retired member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member of plan 2 who meets the length of service requirements of RCW 41.35.420, or a member of plan 3 who meets the length of service requirements of RCW 41.35.680(1), and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.35.420(1) for members of plan 2, or RCW 41.35.680(1) for members of plan 3, and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 12.** RCW 41.40.188 and 2000 c 186 s 7 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons,

trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.180(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.180(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The separate single life benefits of the member and the nonmember ex spouse are not (i) subject to the minimum benefit provisions of RCW 41.40.1984, or (ii) the minimum benefit annual increase amount eligibility provisions of RCW 41.40.197 (2)(b) and (3)(a).

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 13.** RCW 41.40.660 and 2000 c 186 s 8 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.



(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.720 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.630(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed pursuant to chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 14.** RCW 41.40.845 and 2000 c 247 s 314 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.820 or retirement for disability under RCW 41.40.825, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. ~~((However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department, or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse, or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.))~~ Upon the death of the member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) The department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree

is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted under this section and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2002, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted under this section and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.820(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.820(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

**Sec. 15.** RCW 43.43.270 and 2001 c 329 s 6 are each amended to read as follows:

For members commissioned prior to January 1, 2003:

(1) The normal form of retirement allowance shall be an allowance which shall continue as long as the member lives.

(2) If a member should die while in service the member's lawful spouse shall be paid an allowance which shall be equal to fifty percent of the average final salary of the member. If the member should die after retirement the member's lawful spouse shall be paid an allowance which shall be equal to the retirement allowance then payable to the member or fifty percent of the final average salary used in computing the member's retirement allowance, whichever is less. The allowance paid to the lawful spouse shall continue as long as the spouse lives: **PROVIDED**, That if a surviving spouse who is receiving benefits under this subsection marries another member of this retirement system who subsequently predeceases such spouse, the spouse shall then be entitled to receive the higher of the two survivors' allowances for which eligibility requirements were met, but a surviving spouse shall not receive more than one survivor's allowance from this system at the same time under this subsection. To be eligible for an allowance the lawful surviving spouse of a retired member shall have been married to the member prior to the member's retirement and continuously thereafter until the date of the member's death or shall have been married to the retired member at least two years prior to the member's death. The allowance paid to the lawful spouse may be divided with an ex spouse of the member by a dissolution order as defined in RCW 41.50.500(3) incident to a divorce occurring after July 1, 2002. The dissolution order must specifically divide both the member's benefit and any

spousal survivor benefit, and must fully comply with RCW 41.50.670 and 41.50.700.

(3) If a member should die, either while in service or after retirement, the member's surviving unmarried children under the age of eighteen years shall be provided for in the following manner:

(a) If there is a surviving spouse, each child shall be entitled to a benefit equal to five percent of the final average salary of the member or retired member. The combined benefits to the surviving spouse and all children shall not exceed sixty percent of the final average salary of the member or retired member; and

(b) If there is no surviving spouse or the spouse should die, the child or children shall be entitled to a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary of the member or retired member. Payments under this subsection shall be prorated equally among the children, if more than one.

(4) If a member should die in the line of duty while employed by the Washington state patrol, the member's surviving children under the age of twenty years and eleven months if attending any high school, college, university, or vocational or other educational institution accredited or approved by the state of Washington shall be provided for in the following manner:

(a) If there is a surviving spouse, each child shall be entitled to a benefit equal to five percent of the final average salary of the member. The combined benefits to the surviving spouse and all children shall not exceed sixty percent of the final average salary of the member;

(b) If there is no surviving spouse or the spouse should die, the unmarried child or children shall be entitled to receive a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary. Payments under this subsection shall be prorated equally among the children, if more than one; and

(c) If a beneficiary under this subsection reaches the age of twenty-one years during the middle of a term of enrollment the benefit shall continue until the end of that term.

(5) The provisions of this section shall apply to members who have been retired on disability as provided in RCW 43.43.040 if the officer was a member of the Washington state patrol retirement system at the time of such disability retirement.

**Sec. 16.** RCW 43.43.271 and 2001 c 329 s 5 are each amended to read as follows:

(1) A member commissioned on or after January 1, 2003, upon retirement for service as prescribed in RCW 43.43.250 or disability retirement under RCW

43.43.040, shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout the member's life. However, if the retiree dies before the total of the retirement allowance paid to the retiree equals the amount of the retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. This benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than January 1, 2003, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who has completed at least five years of service and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 43.43.250(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 27, 2002.

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**CHAPTER 159**

[Senate Bill 6376]

**PUBLIC EMPLOYEES' RETIREMENT SYSTEM PLAN 3—TRANSFER PERIOD**

AN ACT Relating to the transfer of seasonal and military leave of absence employees to the public employees' retirement system plan 3; and amending RCW 41.40.795.

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

**Sec. 1.** RCW 41.40.795 and 2000 c 247 s 304 are each amended to read as follows:

(1) As used in this section, unless the context clearly requires otherwise:

(a) "Transfer period" means the time during which a member of one of the groups of plan 2 members identified in subsection (2) of this section may choose to irrevocably transfer from plan 2 to plan 3.

(b) "Transfer basis" means the accumulated contributions present in a member's savings fund on March 1, 2002, less fifty percent of any contributions made pursuant to RCW 41.50.165(2), which is the basis for calculation of the plan 2 to plan 3 additional transfer payment.

(c) "Additional transfer payment date" means June 1, 2003, the date of the additional transfer payment made according to subsection (6) of this section.

(2) Every plan 2 member employed by an employer in an eligible position has the option during their transfer period to make an irrevocable transfer to plan 3 according to the following schedule:

(a) For those members employed by state agencies and institutes of higher education the transfer period means the period between March 1, 2002, and September 1, 2002.

(b) For those members employed by other organizations the transfer period means the period between September 1, 2002, and June 1, 2003.

(c) For those members employed by more than one employer within the retirement system, and whose transfer period is different between one employer and another, the member's transfer period is the last period that is available from any of that member's employers within the retirement system.

(3) All service credit in plan 2 shall be transferred to the defined benefit portion of plan 3.

(4)(a) Anyone who first became a state or higher education member of plan 2 before March 1, 2002, or a local government member of plan 2 before September 1, 2002, who wishes to transfer to plan 3 after their transfer period may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(b) Anyone who chose to become a state or higher education member of plan 2 on or after March 1, 2002, or a local government member of plan 2 on or after September 1, 2002, is prohibited from transferring to plan 3 under (a) of this subsection.

(5) The accumulated contributions in plan 2, less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the



member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(3), except that interest earned on all such contributions shall be transferred to the member's account.

(6) ~~((Anyone who requests to transfer under this section during their transfer period, and establishes))~~ Those members employed by state agencies and institutions of higher education who request to transfer under this section during their transfer period and establish service credit for June 2002, and those members employed by other organizations and who establish service credit for either June 2002 or February 2003, shall have their member account:

(a) If a member's transfer period is that described in subsection (2)(a) of this section, increased by one hundred ten percent of the transfer basis;

(b) If a member's transfer period is that described in subsection (2)(b) of this section, increased by one hundred eleven percent of the transfer basis; and

(c) Deposited into the member's individual account on the additional transfer payment date.

(7) If a member who requests to transfer dies before June 1, 2003, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(8) Anyone previously retired from plan 2 is prohibited from transferring to plan 3.

(9) The legislature reserves the right to discontinue the right to transfer under this section and to modify and to discontinue the right to an additional payment under this section for any plan 2 members who have not previously transferred to plan 3.

Passed the Senate March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 160

[Substitute House Bill 2309]

BOARD OF DENTURISTS

AN ACT Relating to the authority of the Washington state board of denturists; amending RCW 18.30.010, 18.30.020, 18.30.040, 18.30.050, 18.30.090, 18.30.100, and 18.30.140; adding a new section to chapter 18.30 RCW; and repealing RCW 18.30.080.

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

**Sec. 1.** RCW 18.30.010 and 1995 c 1 s 2 are each amended to read as follows:

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

(1) "Board" means the Washington state board of ~~((denture technology))~~ denturists.

(2) "Denture" means a removable full or partial upper or lower dental appliance to be worn in the mouth to replace missing natural teeth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturism.

(4) "Department" means the department of health.

(5) "Practice of denturism" means:

(a) Making, placing, constructing, altering, reproducing, or repairing a denture; and

(b) Taking impressions and furnishing or supplying a denture directly to a person or advising the use of a denture, and maintaining a facility for the same.

(6) "Secretary" means the secretary of health or the secretary's designee.

**Sec. 2.** RCW 18.30.020 and 1995 c 198 s 18 are each amended to read as follows:

(1) Before making and fitting a denture, a denturist shall examine the patient's oral cavity.

(a) If the examination gives the denturist reasonable cause to believe that there is an abnormality or disease process that requires medical or dental treatment, the denturist shall immediately refer the patient to a dentist or physician. In such cases, the denturist shall take no further action to manufacture or place a denture until the patient has been examined by a dentist or physician and the dentist or physician gives written clearance that the denture will pose no threat to the patient's health.

(b) If the examination reveals the need for tissue or teeth modification in order to assure proper fit of a full or partial denture, the denturist shall refer the patient to a dentist and assure that the modification has been completed before taking an impression for the completion of the denture.

(2) A denturist who makes or places a denture in a manner not consistent with this section is subject to the sanctions provided in chapter 18.130 RCW, the uniform disciplinary act.

(3) A denturist must successfully complete special training in oral pathology prescribed by the ~~((secretary))~~ board, whether as part of an approved associate degree program or equivalent training, and pass an examination prescribed by the ~~((secretary))~~ board, which may be a part of the examination for licensure to become a licensed denturist.

**Sec. 3.** RCW 18.30.040 and 1995 c 1 s 5 are each amended to read as follows: Nothing in this chapter prohibits or restricts:

(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this state and who is performing services within the authorized scope of practice;

(2) The practice of denturism by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(3) The practice of denturism by students enrolled in a school approved by the ((department)) board. The performance of services must be pursuant to a course of instruction or an assignment from an instructor and under the supervision of an instructor; or

(4) Work performed by dental labs and dental technicians under the written prescription of a dentist.

**Sec. 4.** RCW 18.30.050 and 1995 c 1 s 6 are each amended to read as follows:

(1) The Washington state board of ((~~denture technology~~)) denturists is created. The board shall consist of seven members appointed by the secretary as follows:

(a) Four members of the board must be denturists licensed under this chapter, except initial appointees, who must have five years' experience in the field of denturism or a related field.

(b) Two members shall be selected from persons who are not affiliated with any health care profession or facility, at least one of whom must be over sixty-five years of age representing the elderly.

(c) One member must be a dentist licensed in the state of Washington.

(2) The members of the board shall serve for terms of three years. The terms of the initial members shall be staggered, with the members appointed under subsection (1)(a) of this section serving two-year and three-year terms initially and the members appointed under subsection (1)(b) and (c) of this section serving one-year, two-year, and three-year terms initially. Vacancies shall be filled in the same manner as the original appointments are made. Appointments to fill vacancies shall be for the remainder of the unexpired term of the vacant position.

(3) No appointee may serve more than two consecutive terms.

(4) Members of the board shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(5) A member of the board may be removed for just cause by the secretary.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 18.30 RCW to read as follows:

The board shall:

(1) Determine the qualifications of persons applying for licensure under this chapter;

(2) Prescribe, administer, and determine the requirements for examinations under this chapter and establish a passing grade for licensure under this chapter;

(3) Adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter in consultation and in agreement with the secretary;

(4) Have authority to provide requirements for continuing competency as a condition of license renewal by rule in agreement with the secretary; and

(5) Evaluate and approve those schools from which graduation is accepted as proof of an applicant's completion of coursework requirements for licensure.

Sec. 6. RCW 18.30.090 and 1995 c 198 s 20 are each amended to read as follows:

The secretary shall issue a license to practice denturism to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturism under statutory provisions of another state, territory of the United States, District of Columbia, or Puerto Rico, with substantially equivalent licensing standards to this chapter shall be licensed without examination upon providing the department with the following:

(a) Proof of successfully passing a written and clinical examination for denturism in a state, territory of the United States, District of Columbia, or Puerto Rico, that the ~~((secretary))~~ board has determined has substantially equivalent licensing standards as those in this chapter ~~((in))~~, including but not limited to both the written and clinical examinations; and

(b) An affidavit from the ~~((state))~~ licensing agency where the person is licensed or certified attesting to the fact of the person's licensure or certification.

(2) A person graduating from a formal denturism program shall be licensed if he or she:

(a) Documents successful completion of formal training with a major course of study in denturism of not less than two years in duration at an educational institution ~~((recognized))~~ approved by the ~~((secretary))~~ board; and

(b) Passes a written and clinical examination approved by the ~~((secretary))~~ board.

~~((3)) An applicant who does not otherwise qualify under subsection (1) or (2) of this section shall be licensed within two years of December 8, 1994, if he or she:~~

~~— (a) Provides to the secretary three affidavits by persons other than family members attesting to the applicant's employment in denture technology for at least five years, or provides documentation of at least four thousand hours of practical work within denture technology;~~

~~— (b) Provides documentation of successful completion of a training course approved by the secretary or completion of an equivalent course approved by the secretary; and~~

~~— (c) Passes a written and clinical examination administered by the secretary;))~~

Sec. 7. RCW 18.30.100 and 1995 c 198 s 21 are each amended to read as follows:

The ~~((secretary))~~ board shall administer the examinations for licensing under this chapter, subject to the following requirements:

(1) Examinations shall determine the qualifications, fitness, and ability of the applicant to practice denturism. The test shall include a written examination and a practical demonstration of skills.

(2) Examinations shall be held at least annually.

(3) The first examination shall be conducted not later than July 1, 1995.

(4) The written examination shall cover the following subjects: (a) Head and oral anatomy and physiology; (b) oral pathology; (c) partial denture construction and design; (d) microbiology; (e) clinical dental technology; (f) dental laboratory technology; (g) clinical jurisprudence; (h) asepsis; (i) medical emergencies; and (j) cardiopulmonary resuscitation.

(5) Upon payment of the appropriate fee, an applicant who fails either the written or practical examination may have additional opportunities to take the portion of the examination that he or she failed.

The secretary may hire trained persons licensed under this chapter to prepare, administer, and grade the examinations or may contract with regional examiners who meet qualifications adopted by the ~~((secretary))~~ board.

**Sec. 8.** RCW 18.30.140 and 1995 c 198 s 24 are each amended to read as follows:

(1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice denturism in this state without first activating the license.

~~(2) ((The inactive renewal fee shall be established by the secretary. Failure to renew an inactive license shall result in cancellation in the same manner as failure to renew an active license results in cancellation.~~

~~—(3))~~ An inactive license may be placed in an active status upon compliance with rules established by the ~~((secretary))~~ board.

~~((4))~~ (3) The provisions relating to denial, suspension, and revocation of a license are applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed.

**NEW SECTION. Sec. 9.** RCW 18.30.080 (Secretary—Powers and duties) and 1995 c 198 s 19 & 1995 c 1 s 9 are each repealed.

Passed the House March 11, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 161

[Substitute House Bill 2446]

### WATER AND SEWER PLANS

AN ACT Relating to state agency review of water and sewer general comprehensive plans; amending RCW 90.48.020 and 90.48.110; adding a new section to chapter 43.20 RCW; adding a new section to chapter 57.16 RCW; and adding a new section to chapter 70.116 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.20 RCW to read as follows:

For any new or revised water system plan submitted for review under this chapter, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the department shall provide in writing, to the person or entity submitting the plan, the reason for such action. In addition, the person or entity submitting the plan and the department may mutually agree to an extension of the deadlines contained in this section.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 57.16 RCW to read as follows:

For any new or revised sewer general comprehensive plan submitted by a water-sewer district for review under this chapter, the appropriate state agency shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The appropriate state agency may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the appropriate state agency shall provide in writing to the water-sewer district the reason for such action. In addition, the governing body of the water-sewer district and the appropriate state agency may mutually agree to an extension of the deadlines contained in this section.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 70.116 RCW to read as follows:

For any new or revised water or sewer system plan submitted for review under this chapter, the department of health shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department of health may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the department shall provide in writing, to the person or entity submitting the plan, the reason for such action. In addition, the person or entity submitting the plan and the department of health may mutually agree to an extension of the deadlines contained in this section.

**Sec. 4.** RCW 90.48.020 and 1995 c 255 s 7 are each amended to read as follows:

Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology.

Whenever the words "aquatic noxious weed" are used in this chapter, they have the meaning prescribed under RCW 17.26.020.

Whenever the words "general sewer plan" are used in this chapter they shall be construed to include all sewerage general plans, sewer general comprehensive plans, plans for a system of sewerage, and other plans for sewer systems adopted by a local government entity including but not limited to cities, towns, public utility districts, and water-sewer districts.

**Sec. 5.** RCW 90.48.110 and 1994 c 118 s 1 are each amended to read as follows:

(1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter.

(2) To promote efficiency in service delivery and intergovernmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of future operations and maintenance of said facility or facilities and industrial pretreatment

systems, to local units of government requesting such delegation and meeting criteria established by the department.

(3) For any new or revised general sewer plan submitted for review under this section, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general sewer plan. For rejections of plans or extensions of the timeline, the department shall provide in writing to the local government entity the reason for such action. In addition, the governing body of the local government entity and the department may mutually agree to an extension of the deadlines contained in this section.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 162

[Substitute House Bill 2800]

### CAPITAL PROJECTS SURCHARGE—SERVICES FOR THE BLIND

AN ACT Relating to the capital projects surcharge; and amending RCW 43.01.090.

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

**Sec. 1.** RCW 43.01.090 and 1998 c 105 s 5 are each amended to read as follows:

The director of general administration may assess a charge or rent against each state board, commission, agency, office, department, activity, or other occupant or user for payment of a proportionate share of costs for occupancy of buildings, structures, or facilities including but not limited to all costs of acquiring, constructing, operating, and maintaining such buildings, structures, or facilities and the repair, remodeling, or furnishing thereof and for the rendering of any service or the furnishing or providing of any supplies, equipment, or materials.

The director of general administration may recover the full costs including appropriate overhead charges of the foregoing by periodic billings as determined by the director including but not limited to transfers upon accounts and advancements into the general administration services account. Charges related to the rendering of real estate services under RCW 43.82.010 and to the operation of nonassigned public spaces in Thurston county shall be allocated separately from other charges assessed under this section. Rates shall be established by the director of general administration after consultation with the director of financial management. The director of general administration may allot, provide, or furnish any of such facilities, structures, services, equipment, supplies, or materials to any other public service type occupant or user at such rates or charges as are equitable



and reasonably reflect the actual costs of the services provided: PROVIDED, HOWEVER, That the legislature, its duly constituted committees, interim committees and other committees shall be exempted from the provisions of this section.

Upon receipt of such bill, each entity, occupant, or user shall cause a warrant or check in the amount thereof to be drawn in favor of the department of general administration which shall be deposited in the state treasury to the credit of the general administration services account unless the director of financial management has authorized another method for payment of costs.

Beginning July 1, 1995, the director of general administration shall assess a capital projects surcharge upon each agency or other user occupying a facility owned and managed by the department of general administration in Thurston county. The capital projects surcharge does not apply to agencies or users that agree to pay all future repairs, improvements, and renovations to the buildings they occupy and a proportional share, as determined by the office of financial management, of all other campus repairs, installations, improvements, and renovations that provide a benefit to the buildings they occupy or that have an agreement with the department of general administration that contains a charge for a similar purpose, including but not limited to RCW 43.01.091, in an amount greater than the capital projects surcharge. Beginning July 1, 2002, the capital projects surcharge does not apply to department of services for the blind vendors who operate cafeteria services in facilities owned and managed by the department of general administration; the department shall consider this space to be a common area for purposes of allocating the capital projects surcharge to other building tenants beginning July 1, 2003. The director, after consultation with the director of financial management, shall adopt differential capital project surcharge rates to reflect the differences in facility type and quality. The initial payment structure for this surcharge shall be one dollar per square foot per year. The surcharge shall increase over time to an amount that when combined with the facilities and service charge equals the market rate for similar types of lease space in the area or equals five dollars per square foot per year, whichever is less. The capital projects surcharge shall be in addition to other charges assessed under this section. Proceeds from the capital projects surcharge shall be deposited into the Thurston county capital facilities account created in RCW 43.19.501.

Passed the House February 17, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 163

[Senate Bill 6577]

PUBLIC WORKS CONTRACTS—SUBCONTRACTOR IDENTIFICATION

AN ACT Relating to identification of subcontractors on public works contracts; amending RCW 39.30.060; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** This act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects.

**Sec. 2.** RCW 39.30.060 and 1999 c 109 s 1 are each amended to read as follows:

(1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 or an institution of higher education as defined under RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning((;))); plumbing as described in chapter 18.106 RCW((;)); and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

(a) Refusal of the listed subcontractor to sign a contract with the prime contractor;

(b) Bankruptcy or insolvency of the listed subcontractor;

(c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;

(d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or

(e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

(3) The requirement of this section to name the prime contract bidder's proposed (~~(heating, ventilation and air conditioning)~~) HVAC, plumbing, and electrical subcontractors applies only to proposed (~~(heating, ventilation and air conditioning)~~) HVAC, plumbing, and electrical subcontractors who will contract directly with the (~~(general contractor)~~) prime contract bidder submitting the bid to the public entity.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 164

[Substitute House Bill 1079]

### CAPITOL GROUNDS—BUILDING NAMES

AN ACT Relating to naming state buildings; and adding a new section to chapter 43.34 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.34 RCW to read as follows:

(1) The legislature shall approve names for new or existing buildings on the state capitol grounds based upon recommendations from the state capitol committee and the director of the department of general administration, with the advice of the capitol campus design advisory committee, subject to the following limitations:

(a) An existing building may be renamed only after a substantial renovation or a change in the predominant tenant agency headquartered in the building.

(b) A new or existing building may be named or renamed after:

(i) An individual who has played a significant role in Washington history;

(ii) The purpose of the building;

(iii) The single or predominant tenant agency headquartered in the building;

(iv) A significant place name or natural place in Washington;

(v) A Native American tribe located in Washington;

(vi) A group of people or type of person;

(vii) Any other appropriate person consistent with this section as recommended by the director of the department of general administration.

(c) The names on the facades of the state capitol group shall not be removed.

(2) The legislature shall approve names for new or existing public rooms or spaces on the west capitol campus based upon recommendations from the state capitol committee and the director of the department of general administration, with the advice of the capitol campus design advisory committee, subject to the following limitations:

(a) An existing room or space may be renamed only after a substantial renovation;

(b) A new or existing room or space may be named or renamed only after:

(i) An individual who has played a significant role in Washington history;

(ii) The purpose of the room or space;

(iii) A significant place name or natural place in Washington;

(iv) A Native American tribe located in Washington;

(v) A group of people or type of person;

(vi) Any other appropriate person consistent with this section as recommended by the director of the department of general administration.

(3) When naming or renaming buildings, rooms, and spaces under this section, consideration must be given to: (a) Any disparity that exists with respect to the gender of persons after whom buildings, rooms, and spaces are named on the state capitol grounds; (b) the diversity of human achievement; and (c) the diversity of the state's citizenry and history.

(4) For purposes of this section, "state capitol grounds" means buildings and land owned by the state and otherwise designated as state capitol grounds, including the west capitol campus, the east capitol campus, the north capitol campus, the Tumwater campus, the Lacey campus, Sylvester Park, Centennial Park, the Old Capitol Building, and Capitol Lake.

Passed the House March 11, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 165

[Substitute House Bill 2169]

### FIRE DISTRICTS—WARRANTS

AN ACT Relating to fire districts' options for issuing warrants; and amending RCW 52.16.050.

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

**Sec. 1.** RCW 52.16.050 and 1998 c 5 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, the county treasurer shall pay out money received for the account of the district on warrants issued by the county auditor against the proper funds of the district. The warrants shall be issued on vouchers approved and signed by a majority of the district board and by the district secretary.

(2) The board of fire commissioners of a district that had an annual operating budget of five million or more dollars in each of the preceding three years may by resolution adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and

amount, and the accounting funds on which the warrants shall be drawn; thereupon the district secretary may issue the warrants specified in the general certificate.

(3) The board of fire commissioners of a district that had an annual operating budget of greater than two hundred fifty thousand dollars and under five million dollars in each of the preceding three years may upon agreement between the county treasurer and the fire district commission, with approval of the fire district commission by resolution, adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants shall be drawn. The district secretary may then issue the warrants specified in the general certificate.

(4) The county treasurer may also pay general obligation bonds and the accrued interest thereon in accordance with their terms from the general obligation bond fund when interest or principal payments become due. The county treasurer shall report in writing monthly to the secretary of the district the amount of money held by the county in each fund and the amounts of receipts and disbursements for each fund during the preceding month.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 166

[House Bill 2657]

### AGRICULTURAL PRODUCTS—PUBLIC PURCHASING

AN ACT Relating to agricultural products purchased for state institutions and state-supported facilities; adding a new section to chapter 43.19 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 state-produced agricultural products are of the highest quality, transported the least distance, and are the freshest agricultural products available in Washington state. The legislature further finds that providing improved markets for the richly diversified agricultural commodities produced in Washington is needed to stabilize and enhance the rural and agricultural economies in Washington.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 43.19 RCW to read as follows:

(1) The department of general administration, through the state purchasing and material control director, shall encourage each state and local agency doing

business with the department to purchase Washington fruit, vegetables, and agricultural products when available.

(2) The department of general administration shall work with the department of agriculture and other interested parties to identify and recommend strategies to increase public purchasing of Washington fruit, vegetables, and agricultural products, and report back orally to the appropriate committees of the legislature in September 2002, and in January 2003.

**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 11, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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**CHAPTER 167**

[House Bill 2907]

**LEGISLATIVE BUILDING RESTORATION—FUND-RAISING**

AN ACT Relating to fund-raising efforts for the state legislative building renovation project; amending RCW 42.52.800; adding a new section to chapter 27.48 RCW; creating a new section; and declaring an emergency.

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

**NEW SECTION. Sec. I.** The legislature finds that the Washington state legislative building is an architecturally significant and irreplaceable building worthy of rehabilitation and enhancement. Not only is it a magnificent building, but it also reflects the essence of self-government and democracy in the state of Washington.

The legislature further finds that the state legislative building is an important asset to the citizens of Washington state, allowing them to learn about state government, to research and track legislative activity, to meet with state officials, and to participate in government.

The legislature further finds that a combination of public funds and private donations can involve the citizens of Washington state in the building's rehabilitation and enhancement by engaging the public in the preservation of the state legislative building and raising private funds for restoration and educational efforts.

**NEW SECTION. Sec. 2.** A new section is added to chapter 27.48 RCW to read as follows:

State officers and state employees, as those terms are defined in RCW 42.52.010, may engage in or encourage fund-raising activities including the solicitation of charitable gifts, grants, or donations specifically for the limited

purpose of preservation and restoration of the state legislative building and related educational exhibits and programs.

**Sec. 3.** RCW 42.52.800 and 1999 c 343 s 4 are each amended to read as follows:

(1) When soliciting charitable gifts, grants, or donations solely for the limited purposes of RCW 27.48.040, members of the capitol furnishings preservation committee are exempt from the laws of this chapter.

(2) When soliciting charitable gifts, grants, or donations solely for the limited purposes of section 2 of this act or when assisting a nonprofit foundation established for the purposes of section 2 of this act, state officers and state employees are exempt from the laws of this chapter.

**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 14, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 168

[Senate Bill 6466]

### COUNTY TREASURERS

AN ACT Relating to county treasurer administration; and amending RCW 35.50.030, 36.94.230, 43.09.240, 36.29.010, 46.16.160, 46.44.170, 46.44.173, 84.40.042, 84.64.060, 84.64.070, 84.69.020, and 84.69.100.

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

**Sec. 1.** RCW 35.50.030 and 1997 c 393 s 1 are each amended to read as follows:

If on the first day of January in any year, two installments of any local improvement assessment are delinquent, or if the final installment thereof has been delinquent for more than one year, the city or town shall proceed with the foreclosure of the delinquent assessment or delinquent installments thereof by proceedings brought in its own name in the superior court of the county in which the city or town is situate.

The proceedings shall be commenced on or before March 1st of that year or on or before such other date in such year as may be fixed by general ordinance, but not before the city or town treasurer has notified by certified mail the persons whose names appear on the current assessment roll as owners of the property charged with the assessments or installments which are delinquent, at the address last known to the treasurer, a notice thirty days before the commencement of the proceedings. If the person whose name appears on the ((~~tax~~)) assessment rolls of the county assessor as owner of the property, or whose name appears on the tax

rolls of the county treasurer as taxpayer of the property, or the address shown for the owner, differs from that appearing on the city or town assessment roll, then the treasurer shall also mail a copy of the notice to that person or that address.

The notice shall state the amount due, including foreclosure costs, upon each separate lot, tract, or parcel of land and the date after which the proceedings will be commenced. The city or town treasurer shall file with the clerk of the superior court at the time of commencement of the foreclosure proceeding the affidavit of the person who mailed the notices. This affidavit shall be conclusive proof of compliance with the requirements of this section.

**Sec. 2.** RCW 36.94.230 and 1981 c 313 s 4 are each amended to read as follows:

Utility local improvement districts and local improvement districts to carry out all or any portion of the general plan, or additions and betterments thereof, may be initiated either by resolution of the county legislative authority or by petition signed by the owners according to the records of the office of the county (~~(auditor)~~) assessor of at least fifty-one percent of the area of land within the limits of the local district to be created.

In case the county legislative authority desires to initiate the formation of a local district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.

In case any such local district is initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement and the fact that the signers thereof are the owners according to the records of the county (~~(auditor)~~) assessor of at least fifty-one percent of the area of land within the limits of the local district to be created. Upon the filing of such petition with the clerk of the county legislative authority, the authority shall determine whether the same is sufficient, and the authority's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from said petition after the filing thereof with the clerk of the county legislative authority. If the county legislative authority finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time, and place for a public hearing on the formation of the proposed local district.



Notice of the adoption of the resolution of intention, whether adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the county legislative authority. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed local district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notice shall refer to the resolution of intention and designate the proposed local district by number. Said notice shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, or parcel, the date, time, and place of the hearing before the county legislative authority; and in the case of improvements initiated by resolution, said notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the clerk of the county legislative authority before the time fixed for said public hearing.

**Sec. 3.** RCW 43.09.240 and 1995 c 301 s 13 are each amended to read as follows:

Every public officer and employee of a local government shall keep all accounts of his or her office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or willfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the local government once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible as long as the treasurer has received a written request from the department, district, or agency, and where the department, district, or agency certifies that the money is held with proper safekeeping and that the entity carries out proper theft protection to reduce risk of loss of funds. Exceptions granted by the treasurer shall state the frequency with which deposits are required as long as no exception exceeds a time period greater than one deposit per week.

In case a public officer or employee collects or receives funds for the account of a local government of which he or she is an officer or employee, the treasurer shall, by Friday of each week, pay to the proper officer of the local government for

the account of which the collection was made or payment received, the full amount collected or received during the current week for the account of the district.

**Sec. 4.** RCW 36.29.010 and 2001 c 299 s 4 are each amended to read as follows:

The county treasurer:

(1) Shall receive all money due the county and disburse it on warrants issued and attested by the county auditor and electronic funds transfer under RCW 39.58.750 as attested by the county auditor;

(2) Shall issue a receipt in duplicate for all money received other than taxes; the treasurer shall deliver immediately to the person making the payment the original receipt and the duplicate shall be retained by the treasurer;

(3) Shall affix on the face of all paid warrants the date of redemption or, in the case of proper contract between the treasurer and a qualified public depository, the treasurer may consider the date affixed by the financial institution as the date of redemption;

(4) Shall endorse, before the date of issue by the county or by any taxing district for whom the county treasurer acts as treasurer, on the face of all warrants for which there are not sufficient funds for payment, "interest bearing warrant." When there are funds to redeem outstanding warrants, the county treasurer shall give notice:

(a) By publication in a legal newspaper published or circulated in the county; or

(b) By posting at three public places in the county if there is no such newspaper; or

(c) By notification to the financial institution holding the warrant;

(5) Shall pay interest on all interest-bearing warrants from the date of issue to the date of notification;

(6) Shall maintain financial records reflecting receipts and disbursement by fund in accordance with generally accepted accounting principles;

(7) Shall account for and pay all bonded indebtedness for the county and all special districts for which the county treasurer acts as treasurer;

(8) Shall invest all funds of the county or any special district in the treasurer's custody, not needed for immediate expenditure, in a manner consistent with appropriate statutes. If cash is needed to redeem warrants issued from any fund in the custody of the treasurer, the treasurer shall liquidate investments in an amount sufficient to cover such warrant redemptions; and

(9) May provide certain collection services for county departments.

The treasurer, at the expiration of the term of office, shall make a complete settlement with the county legislative authority, and shall deliver to the successor all public money, books, and papers in the treasurer's possession.

Money received by all entities for whom the county treasurer serves as treasurer must be deposited within twenty-four hours unless a waiver is granted by the county treasurer in accordance with RCW 43.09.240.

Sec. 5. RCW 46.16.160 and 1999 c 270 s 1 are each amended to read as follows:

(1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits (~~may also be issued~~) are required for movement of mobile homes ((pursuant to RCW 46.44.170)) or park model trailers and may only be issued if property taxes are paid in full. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days, except that in the case of a recreational vehicle as defined in RCW 43.22.335, no more than two trip permits may be used for any one vehicle in a one-year period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(3) Vehicles operating under authority of trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) Trip permits may be obtained from field offices of the department of transportation, Washington state patrol, department of licensing, or other agents appointed by the department. For each permit issued, there shall be collected a filing fee as provided by RCW 46.01.140, an administrative fee of eight dollars, and an excise tax of one dollar. If the filing fee amount of one dollar prescribed by RCW 46.01.140 is increased or decreased after January 1, 1981, the administrative fee shall be adjusted to compensate for such change to insure that the total amount collected for the filing fee, administrative fee, and excise tax remain at ten dollars. These fees and taxes are in lieu of all other vehicle license

fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) A violation of or a failure to comply with any provision of this section is a gross misdemeanor.

(8) The department of licensing may adopt rules as it deems necessary to administer this section.

(9) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW 46.01.140.

**Sec. 6.** RCW 46.44.170 and 1986 c 211 s 4 are each amended to read as follows:

(1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain a special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model that is assessed for purposes of property taxes shall not be valid until the county treasurer of the county in which the mobile home or park model trailer is located shall endorse or attach thereto his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section shall display an easily recognizable decal: PROVIDED, That endorsement or certification by the county treasurer and the display of said decal is not required when a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets. It shall be the responsibility of the owner of the mobile home or park

model trailer subject to property taxes or the agent to obtain such endorsement from the county treasurer and said decal.

(3) Nothing herein should be construed as prohibiting the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but no such plates shall be issued unless the mobile home or park model trailer subject to property taxes for which such plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for such license has been paid.

(4) The department of transportation and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section.

**Sec. 7.** RCW 46.44.173 and 1984 c 7 s 61 are each amended to read as follows:

(1) Upon validation of a special permit as provided in RCW 46.44.170, the county treasurer shall forward notice of movement of the mobile home or park model trailer subject to property taxes to the treasurer's own county assessor and to the county assessor of the county in which the mobile home or park model trailer will be located.

(2) When a single trip special permit not requiring tax certification is issued, the department of transportation or the local authority shall notify the assessor of the county in which the mobile home or park model trailer is to be located. When a continuous trip special permit is used to transport a mobile home or park model trailer not requiring tax certification, the transporter shall notify the assessor of the county in which the mobile home or park model trailer is to be located. Notification is not necessary when the destination of a mobile home or park model trailer is a manufacturer, distributor, retailer, or location outside the state.

(3) A notification under this section shall state the specific, residential destination of the mobile home or park model trailer.

**Sec. 8.** RCW 84.40.042 and 1997 c 393 s 17 are each amended to read as follows:

(1) When real property is divided in accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically provided otherwise by law. For purposes of this section, "lot" has the same definition as in RCW 58.17.020.

(a) For each lot on which an advance tax deposit has been paid in accordance with RCW 58.08.040, the assessor shall establish the true and fair value by October 30 of the year following the recording of the plat, replat, altered plat, or binding site plan. The value established shall be the value of the lot as of January 1 of the year the original parcel of real property was last revalued. An additional property tax shall not be due on the land until the calendar year following the year for which

the advance tax deposit was paid if the deposit was sufficient to pay the full amount of the taxes due on the property.

(b) For each lot on which an advance tax deposit has not been paid, the assessor shall establish the true and fair value not later than the calendar year following the recording of the plat, map, subdivision, or replat. For purposes of this section, "subdivision" means a division of land into two or more lots.

(c) For each subdivision, all current year and delinquent taxes and assessments on the entire tract must be paid in full in accordance with RCW 58.17.160 and 58.08.030 except when property is being acquired by a government for public use. For purposes of this section, "current year taxes" means taxes that are collectible under RCW 84.56.010 subsequent to February 14.

(2) When the assessor is required by law to segregate any part or parts of real property, assessed before or after July 27, 1997, as one parcel or when the assessor is required by law to combine parcels of real property assessed before or after July 27, 1997, as two or more parcels, the assessor shall carefully investigate and ascertain the true and fair value of each part or parts of the real property and each combined parcel and assess each part or parts or each combined parcel on that same basis.

**Sec. 9.** RCW 84.64.060 and 1963 c 88 s 1 are each amended to read as follows:

Any person owning an interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, interest and costs due thereon to the county treasurer of the county in which the same are situated, at any time before the day of the sale; and for the amount so paid he or she shall have a lien on the property liable for taxes, interest and costs for which judgment is prayed; and the person or authority who shall collect or receive the same shall give a receipt for such payment, or issue to such person a certificate showing such payment. If paying by agent, the agent shall provide notarized documentation of the agency relationship.

**Sec. 10.** RCW 84.64.070 and 1991 c 245 s 26 are each amended to read as follows:

Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the close of business the day before the day of the sale, by payment, as prescribed by the county treasurer, to the county treasurer of the proper county, of the amount for which the certificate of delinquency was issued, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes from date of issuance of the certificate of delinquency until paid. The person redeeming such property shall also pay the amount of all taxes, interest and costs accruing after the issuance of such certificate of delinquency, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes on such payment from the day the same was made. No fee shall be charged for any redemption. Tenants in common or joint tenants shall be allowed

to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in ~~((this section))~~ RCW 84.64.060 for the redemption of real property other than that of persons adjudicated to be legally incompetent or minors for purposes of this section. If the real property of any minor, or any person adjudicated to be legally incompetent, be sold for nonpayment of taxes, the same may be redeemed at any time within three years after the date of sale upon the terms specified in this section, on the payment of interest at the statutory rate per annum charged on delinquent general real and personal property taxes on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf.

**Sec. 11.** RCW 84.69.020 and 1999 sp.s. c 8 s 2 are each amended to read as follows:

On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once;
- (2) Paid as a result of manifest error in description;
- (3) Paid as a result of a clerical error in extending the tax rolls;
- (4) Paid as a result of other clerical errors in listing property;
- (5) Paid with respect to improvements which did not exist on assessment date;
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional;
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended;
- (8) Paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person with respect to real property in which the person paying the same has no legal interest;
- (9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board;
- (10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: **PROVIDED**, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order;
- (11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: **PROVIDED, HOWEVER**, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 of the state Constitution equal one percent of the assessed value established by the board;

(12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding;

(13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2);

(14) Paid on the basis of an assessed valuation that was reduced under RCW 84.48.065;

(15) Paid on the basis of an assessed valuation that was reduced under RCW 84.40.039; or

(16) Abated under RCW 84.70.010.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid. However, refunds as a result of an incorrect payment authorized under subsection (8) of this section made by a third party payee shall not include refund interest. The county treasurer may deduct from moneys collected for the benefit of the state's levy, refunds of the state levy including interest on the levy as provided by this section and chapter 84.68 RCW.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in February of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund.

**Sec. 12.** RCW 84.69.100 and 1997 c 67 s 1 are each amended to read as follows:

Unless otherwise stated, refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 shall include interest from the date of collection of the portion refundable: PROVIDED, That refunds on a state, county, or district wide basis shall not commence to accrue interest until six months following the date of the final order of the court. No written protest by individual taxpayers need to be filed to receive a refund on a state, county, or district wide basis. The rate of interest shall be the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The department of revenue shall adopt this rate of interest by rule.



Passed the Senate March 11, 2002.  
Passed the House March 5, 2002.  
Approved by the Governor March 27, 2002.  
Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 169

[Second Substitute House Bill 1938]  
SENTENCING—SABOTAGE

AN ACT Relating to sabotage resulting in damage to land, facilities, and property; and amending RCW 9.94A.535.

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

**Sec. 1.** RCW 9.94A.535 and 2001 2nd sp.s. c 12 s 314 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence unless it is imposed on an offender sentenced under RCW 9.94A.712. An exceptional sentence imposed on an offender sentenced under RCW 9.94A.712 shall be to a minimum term set by the court and a maximum term equal to the statutory maximum sentence for the offense of conviction under chapter 9A.20 RCW.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(j) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(k) The offense resulted in the pregnancy of a child victim of rape.

(l) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(m) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 170

[Substitute House Bill 2379]

LEAVING A CHILD IN THE CARE OF A SEX OFFENDER

AN ACT Relating to leaving a child with a sex offender; adding a new section to chapter 9A.42 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.42 RCW to read as follows:

(1) A person is guilty of the crime of leaving a child in the care of a sex offender if the person is (a) the parent of a child; (b) entrusted with the physical custody of a child; or (c) employed to provide to the child the basic necessities of life, and leaves the child in the care or custody of another person who is not a parent, guardian, or lawful custodian of the child, knowing that the person is registered or required to register as a sex offender under the laws of this state, or a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child.

(2) It is an affirmative defense to the charge of leaving a child in the care of a sex offender under this section, that the defendant must prove by a preponderance of the evidence, that a court has entered an order allowing the offender to have unsupervised contact with children, or that the offender is allowed to have unsupervised contact with the child in question under a family reunification plan, which has been approved by a court, the department of corrections, or the department of social and health services in accordance with department policies.

(3) Leaving a child in the care of a sex offender is a misdemeanor.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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**CHAPTER 171**

[House Bill 2380]

**JUVENILE OFFENDERS**

AN ACT Relating to children offenders; amending RCW 72.01.410 and 13.40.040; and declaring an emergency.

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

**Sec. 1.** RCW 72.01.410 and 1997 c 338 s 41 are each amended to read as follows:

(1) Whenever any child under the age of eighteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of corrections, after making an independent assessment and evaluation of the child and determining that the needs and correctional goals for the child could better be met by the programs and housing environment provided by the juvenile correctional institution, with the consent of the secretary of social and health services, may transfer such child to a juvenile correctional institution, or to such

other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of twenty-one years, whereupon the child shall be returned to the institution of original commitment. Retention within a juvenile detention facility or return to an adult correctional facility shall regularly be reviewed by the secretary of corrections and the secretary of social and health services with a determination made based on the level of maturity and sophistication of the individual, the behavior and progress while within the juvenile detention facility, security needs, and the program/treatment alternatives which would best prepare the individual for a successful return to the community. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known.

(2)(a) Except as provided in (b) and (c) of this subsection, an offender under the age of eighteen who is convicted in adult criminal court and who is committed to a term of confinement at the department of corrections must be placed in a housing unit, or a portion of a housing unit, that is separated from offenders eighteen years of age or older, until the offender reaches the age of eighteen.

(b) An offender who reaches eighteen years of age may remain in a housing unit for offenders under the age of eighteen if the secretary of corrections determines that: (i) The offender's needs and the correctional goals for the offender could continue to be better met by the programs and housing environment that is separate from offenders eighteen years of age and older; and (ii) the programs or housing environment for offenders under the age of eighteen will not be substantially affected by the continued placement of the offender in that environment. The offender may remain placed in a housing unit for offenders under the age of eighteen until such time as the secretary of corrections determines that the offender's needs and correctional goals are no longer better met in that environment but in no case past the offender's twenty-first birthday.

(c) An offender under the age of eighteen may be housed in an intensive management unit or administrative segregation unit containing offenders eighteen years of age or older if it is necessary for the safety or security of the offender or staff. In these cases, the offender shall be kept physically separate from other offenders at all times.

**Sec. 2.** RCW 13.40.040 and 1999 c 167 s 2 are each amended to read as follows:

(1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(3) Notwithstanding subsection (2) of this section, and within available funds, a juvenile who has been found guilty of one of the following offenses shall be detained pending disposition: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); or rape of a child in the first degree (RCW 9A.44.073).

(4) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

~~((4))~~ (5) Except as provided in RCW 9.41.280, a juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of social and health services. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping.

**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, 2002.

Passed the Senate March 13, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 172

[House Bill 2421]

### PUBLIC RECORD DISCLOSURE—CORRECTIONAL FACILITIES—SECURITY PLANS

AN ACT Relating to public access to records concerning security assessments or plans at correctional facilities; 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 2001 c 278 s 1, 2001 c 98 s 2, and 2001 c 70 s 1 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 or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing 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.

(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.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's 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 House March 2, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 173

[House Bill 2672]

### HIGH RISK OFFENDERS—TREATMENT PROVIDERS' LIABILITY

AN ACT Relating to limiting the liability of providers of treatment to high risk offenders; and adding a new section to chapter 71.24 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 71.24 RCW to read as follows:

(I) A licensed service provider or regional support network, acting in the course of the provider's or network's duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a dangerous mentally ill offender who is a client of the provider or network, unless the act or omission of the provider or network constitutes:

(a) Gross negligence;

(b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed service provider and regional support network shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed service provider's or regional support network's mere act of treating a dangerous mentally ill offender is not negligence. Nothing in this subsection alters the licensed service provider's or regional support network's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed service providers and regional support networks and does not apply to conduct of the state.

(5) For purposes of this section, "dangerous mentally ill offender" means a person who has been identified under RCW 72.09.370 as an offender who: (a) Is reasonably believed to be dangerous to himself or herself or others; and (b) has a mental disorder.

Passed the House March 11, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 174

[Substitute Senate Bill 6286]

### INDETERMINATE SENTENCE REVIEW BOARD—SEX OFFENDERS

AN ACT Relating to the time permitted for review by the indeterminate sentence review board of sex offenders who are sentenced to short sentences under RCW 9.94A.712; amending RCW 9.95.420 and 9.95.011; and declaring an emergency.

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

**Sec. 1.** RCW 9.95.420 and 2001 2nd sp.s. c 12 s 306 are each amended to read as follows:

(1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.720. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term, not to exceed an additional two years.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not

order the offender released, the board shall establish a new minimum term, not to exceed an additional two years.

**Sec. 2.** RCW 9.95.011 and 2001 2nd sp.s. c 12 s 320 are each amended to read as follows:

(1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.850, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW 9.94A.712, for a sex offense committed on or after ((July)) September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional two years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW 9.94A.712 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional two years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.



**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 March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 175

[Senate Bill 6627]

### COMMUNITY RESTITUTION

AN ACT Relating to community service; amending RCW 7.80.130, 7.80.160, 7.84.110, 7.84.130, 9.94A.505, 9.94A.589, 9.94A.634, 9.94A.650, 9.94A.660, 9.94A.670, 9.94A.680, 9.94A.700, 9.94A.720, 9.94A.737, 9.94A.850, 9.95.435, 10.98.040, 13.40.020, 13.40.0357, 13.40.080, 13.40.160, 13.40.165, 13.40.180, 13.40.200, 13.40.205, 13.40.250, 35.21.209, 35A.21.220, 36.16.139, 46.16.381, 46.20.031, 46.30.020, 46.63.110, 46.63.120, 46.64.055, 51.12.035, 51.12.045, 66.20.200, 66.44.291, 66.44.325, 69.50.425, 70.93.060, 70.155.080, 72.09.060, 72.09.100, 72.09.260, and 79A.05.050; amending 1990 c 66 s 1 (uncodified); reenacting and amending RCW 9.94A.030, 13.40.210, 28A.225.090, and 70.93.250; and providing an effective date.

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

**Sec. 1.** RCW 7.80.130 and 1987 c 456 s 21 are each amended to read as follows:

(1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community ((service)) restitution in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

**Sec. 2.** RCW 7.80.160 and 1989 c 373 s 12 are each amended to read as follows:

(1) A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

(2) Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by an appearance by counsel.

(3) A person who willfully fails to pay a monetary penalty or to perform community ((service)) restitution as required by a court under this chapter may be found in contempt of court as provided in chapter 7.21 RCW.

**Sec. 3.** RCW 7.84.110 and 1987 c 380 s 11 are each amended to read as follows:

(1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances, is civil in nature.

(2) The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request, the court may order performance of a number of hours of community ((~~service~~)) restitution in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

**Sec. 4.** RCW 7.84.130 and 1987 c 380 s 13 are each amended to read as follows:

(1) Failure to pay a monetary penalty assessed by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

(2) Failure to complete community ((~~service~~)) restitution ordered by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

**Sec. 5.** RCW 9.94A.030 and 2001 2nd sp.s. c 12 s 301, 2001 c 300 s 3, and 2001 c 7 s 2 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, 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.

(6) "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.850, for crimes committed on or after July 1, 2000.

(7) "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.

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

(9) "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.

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

(11) "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.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

(14) "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.

(15) "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.

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

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community ((service)) restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(18) "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.

(19) "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.

(20) "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.

(21) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "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.

(24) "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.

(25) "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.

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

(27) "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.

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

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

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(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.

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

(30) "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.

(31) "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.

(32) "Persistent offender" is an offender who:

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

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(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.

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

(34) "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.

(35) "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.

(36) "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.

(37) "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.

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.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.835 or 13.40.135; or

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

(39) "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.

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

(41) "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.



(42) "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.

(43) "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.

(44) "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.

(45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

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

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

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

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "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. 6.** RCW 9.94A.505 and 2001 2nd sp.s. c 12 s 312 are each amended to read as follows:

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

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

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.510;

(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.545, relating to community custody for offenders whose term of confinement is one year or less;

(v) RCW 9.94A.570, relating to persistent offenders;

(vi) RCW 9.94A.540, 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.712, relating to certain sex offenses;

(xi) RCW 9.94A.535, relating to exceptional sentences;

(xii) RCW 9.94A.589, 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~~)) restitution 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.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement

shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, and 9.94A.760.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community 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.750 and 9.94A.753.

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

(9) 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. 7.** RCW 9.94A.589 and 2000 c 28 s 14 are each amended to read as follows:

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: **PROVIDED**, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served

concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that

sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community ((service)) restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

**Sec. 8.** RCW 9.94A.634 and 1998 c 260 s 4 are each amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community ((service)) restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community ((service)) restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community ((service)) restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community ((service)) restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community ((service)) restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate.

**Sec. 9.** RCW 9.94A.650 and 2000 c 28 s 18 are each amended to read as follows:

(I) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have

never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

- (a) Classified as a violent offense or a sex offense under this chapter;
- (b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;
- (c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2); or
- (d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include a term of community supervision or community custody as specified in subsection (3) of this section, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to the period specified in subsection (3) of this section, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community ((service)) restitution work.

(3) The terms and statuses applicable to sentences under subsection (2) of this section are:

(a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(b) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in RCW 9.94A.715 (2) and (3).

(4) The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

**Sec. 10.** RCW 9.94A.660 and 2001 c 10 s 4 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.510 (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;

(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))~~ restitution 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. 11.** RCW 9.94A.670 and 2001 2nd sp.s. c 12 s 316 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

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

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and

(c) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

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

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The

examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(b) The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;

(b) Crime-related prohibitions;

(c) Require the offender to devote time to a specific employment or occupation;

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

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

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(g) Perform community ((service)) restitution work; or

(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

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

(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.

(9) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

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

(11) Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

**Sec. 12.** RCW 9.94A.680 and 1999 c 197 s 6 are each amended to read as follows:

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community ((service)) restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community ((service)) restitution hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used.

**Sec. 13.** RCW 9.94A.700 and 2000 c 28 s 22 are each amended to read as follows:

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

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

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

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

(b) The offender shall work at department-approved education, employment, or community ((service)) restitution, or any combination thereof;

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

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

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

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

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

(d) The offender shall not consume alcohol; or

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

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

**Sec. 14.** RCW 9.94A.720 and 2000 c 28 s 26 are each amended to read as follows:

(1)(a) All offenders sentenced to terms involving community supervision, community ((service)) restitution, community placement, community custody, or legal financial obligation shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(b) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in RCW 9.94A.715.

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.740 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.737. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(2) No offender sentenced to terms involving community supervision, community ((service)) restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and

sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010.

**Sec. 15.** RCW 9.94A.737 and 1999 c 196 s 8 are each amended to read as follows:

(1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.505(8) who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.505(10) who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under RCW 9.94A.505 ~~(2)(b)~~, (5), ~~((7);)~~ or (11), or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community ~~((service))~~ restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under RCW 9.94A.505(9)(a)(ii) who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community ~~((service))~~ restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision



enhanced through electronic monitoring, or any other sanctions available in the community.

(3) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

**Sec. 16.** RCW 9.94A.850 and 2000 c 28 s 41 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and

related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The office of the administrator for the courts shall provide the commission with available data on diversion and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community (~~service~~) restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year

after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

**Sec. 17.** RCW 9.95.435 and 2001 2nd sp.s. c 12 s 309 are each amended to read as follows:

(1) If an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community ((~~service~~)) restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing examiner if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody is a possible sanction for the violation; and

(e) The sanction shall take effect if affirmed by the hearing examiner. Within seven days after the hearing examiner's decision, the offender may appeal the decision to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(5) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

**Sec. 18.** RCW 10.98.040 and 1999 c 143 s 51 are each amended to read as follows:

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

(1) "Arrest and fingerprint form" means the reporting form prescribed by the identification, child abuse, and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

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

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty—case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the identification, child abuse, and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition report shall include but not be limited to the following types of information:

(a) The type of disposition;  
 (b) The statutory citation for the arrests;  
 (c) The sentence structure if the defendant was convicted of a felony;  
 (d) The state identification number; and  
 (e) Identification information and other information that is prescribed by the identification, child abuse, and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol identification, child abuse, and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol section on identification, child abuse, and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community ((~~service~~)) restitution.

**Sec. 19.** RCW 13.40.020 and 1997 c 338 s 10 are each amended to read as follows:

For the purposes of this chapter:

(1) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;

(2) Community-based sanctions may include one or more of the following:

(a) A fine, not to exceed five hundred dollars;

(b) Community ((~~service~~)) restitution not to exceed one hundred fifty hours of ((~~service~~)) community restitution;

(3) "Community ((~~service~~)) restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community ((~~service~~)) restitution may be performed through public or private organizations or through work crews;

(4) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision,

the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

- (a) Community-based sanctions;
- (b) Community-based rehabilitation;
- (c) Monitoring and reporting requirements;
- (d) Posting of a probation bond;

(5) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(6) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(7) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;

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

(9) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(10) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange

and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(11) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(12) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(13) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110 or who is otherwise under adult court jurisdiction;

(15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(16) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community ((~~service~~)) restitution; or (d) \$0-\$500 fine;

(17) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(18) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(19) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;



(20) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(21) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(22) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense if the offense is a sex offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(23) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(24) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(25) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(26) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(27) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(28) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(29) "Violent offense" means a violent offense as defined in RCW 9.94A.030.

**Sec. 20.** RCW 13.40.0357 and 2001 c 217 s 13 are each amended to read as follows:

**DESCRIPTION AND OFFENSE CATEGORY**

JUVENILE		JUVENILE DISPOSITION
DISPOSITION		CATEGORY FOR ATTEMPT,
OFFENSE		BAILJUMP, CONSPIRACY,
CATEGORY	DESCRIPTION (RCW CITATION)	OR SOLICITATION

.....

	<b>Arson and Malicious Mischief</b>	
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+
	<b>Assault and Other Crimes Involving Physical Harm</b>	
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+
	<b>Burglary and Trespass</b>	
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
	<b>Drugs</b>	
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 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
	<b>Firearms and Weapons</b>	
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
	<b>Homicide</b>	
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+
	<b>Kidnapping</b>	
A	Kidnap I (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
	<b>Obstructing Governmental Operation</b>	
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
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+
	<b>Public Disturbance</b>	
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
	<b>Sex Crimes</b>	
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+
	<b>Theft, Robbery, Extortion, and Forgery</b>	
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+
C	Identity Theft 1 (9.35.020(2)(a))	D
D	Identity Theft 2 (9.35.020(2)(b))	E
D	Improperly Obtaining Financial Information ( <del>(9.35.010)</del> ) <u>(9.35.010)</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
	<b>Motor Vehicle Related Crimes</b>	
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
	<b>Other</b>	
B	Bomb Threat (9.61.160)	C
C	Escape 1 <sup>1</sup> (9A.76.110)	C
C	Escape 2 <sup>1</sup> (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
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) <sup>2</sup>	V

<sup>1</sup>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	52-65  WEEKS	80-100  WEEKS	103-129  WEEKS
Current Offense Category	B+	15-36 WEEKS	52-65  WEEKS	80-100  WEEKS	103-129  WEEKS
	B	LOCAL SANCTIONS (LS)	  15-36 WEEKS		52-65  WEEKS
	C+	LS		  15-36 WEEKS	
	C	LS	Local Sanctions: 0 to 30 Days		15-36 WEEKS
	D+	LS	0 to 12 Months Community Supervision		
	D	LS	0 to 150 Hours Community ((Service))		<u>Restitution</u>
	E	LS	\$0 to \$500 Fine		
				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).

**Sec. 21.** RCW 13.40.080 and 1999 c 91 s 1 are each amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community ((~~service~~)) restitution not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by the victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate



attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed;

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of the victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) In assessing periods of community ((service)) restitution to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian and victims who have contacted the diversionary unit and, to the extent possible, involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the diveree.

(b) If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (4)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may not require the juvenile to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Divertees and potential divertees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(7) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(8) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(9) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

(10) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(11) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

- (a) The fact that a charge or charges were made;
- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

(12) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. When a diversionary unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(13) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection shall include the authority to refer the juvenile to community-based counseling or treatment programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversionary unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(14) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(15) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community ((service)) restitution. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community ((service)) restitution in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(16) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section.

**Sec. 22.** RCW 13.40.160 and 1999 c 91 s 2 are each amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsections (2), (3), and (4) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsections (2), (3), and (4) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option C of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

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

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

- (a)(i) Frequency and type of contact between the offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions.

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

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option C, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

- (b)(i) Devote time to a specific education, employment, or occupation;
- (ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement

for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community ~~((service))~~ restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A)

The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (~~((4))~~~~((3))~~) (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

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

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(1)(b)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(6) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(7) Except as provided under subsection (3) or (4) of this section or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(8) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

**Sec. 23.** RCW 13.40.165 and 2001 c 164 s 1 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 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 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.

(4) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection 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, 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)) restitution, 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.

**Sec. 24.** RCW 13.40.180 and 1981 c 299 s 14 are each amended to read as follows:

Where a disposition is imposed on a youth for two or more offenses, the terms shall run consecutively, subject to the following limitations:

(1) Where the offenses were committed through a single act or omission, omission, or through an act or omission which in itself constituted one of the offenses and also was an element of the other, the aggregate of all the terms shall not exceed one hundred fifty percent of the term imposed for the most serious offense;

(2) The aggregate of all consecutive terms shall not exceed three hundred percent of the term imposed for the most serious offense; and

(3) The aggregate of all consecutive terms of community supervision shall not exceed two years in length, or require payment of more than two hundred dollars in fines or the performance of more than two hundred hours of community ((service)) restitution.

**Sec. 25.** RCW 13.40.200 and 1997 c 338 s 31 are each amended to read as follows:

(1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a willful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community ~~((service))~~ restitution hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community ~~((service))~~ restitution.

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community ~~((service))~~ restitution. The number of hours of community ~~((service))~~ restitution in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

(5) When a respondent has willfully violated the terms of a probation bond, the court may modify, revoke, or retain the probation bond as provided in RCW 13.40.054.

**Sec. 26.** RCW 13.40.205 and 1990 c 3 s 103 are each amended to read as follows:

(1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

- (a) Sixty percent of the minimum term of confinement has been served; and
- (b) The purpose of the leave is to enable the juvenile:

- (i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

- (ii) To make plans for parole or release which require the juvenile's personal appearance in the community and which will facilitate the juvenile's reintegration into the community; or

- (iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

(3) No authorized leave may exceed seven consecutive days. The total of all pre-minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community ((service)) restitution, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence.

(11) Subsections (6), (7), and (8) of this section do not apply to juveniles covered by RCW 13.40.215.

**Sec. 27.** RCW 13.40.210 and 2001 c 137 s 2 and 2001 c 51 s I are each reenacted and amended to read as follows:

(1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence

population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section. 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))~~ restitution. Community ~~((service))~~ restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community ~~((service))~~ restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case

manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) 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. 28.** RCW 13.40.250 and 1997 c 338 s 36 are each amended to read as follows:

A traffic or civil infraction case involving a juvenile under the age of sixteen may be diverted in accordance with the provisions of this chapter or filed in juvenile court.

(1) If a notice of a traffic or civil infraction is filed in juvenile court, the juvenile named in the notice shall be afforded the same due process afforded to adult defendants in traffic infraction cases.

(2) A monetary penalty imposed upon a juvenile under the age of sixteen who is found to have committed a traffic or civil infraction may not exceed one hundred dollars. At the juvenile's request, the court may order performance of a number of hours of community ((service)) restitution in lieu of a monetary penalty, at the rate of the prevailing state minimum wage per hour.

(3) A diversion agreement entered into by a juvenile referred pursuant to this section shall be limited to thirty hours of community ((service)) restitution, or educational or informational sessions.

(4) If a case involving the commission of a traffic or civil infraction or offense by a juvenile under the age of sixteen has been referred to a diversion unit, an abstract of the action taken by the diversion unit may be forwarded to the department of licensing in the manner provided for in RCW 46.20.270(2).

**Sec. 29.** RCW 28A.225.090 and 2000 c 162 s 15 and 2000 c 61 s 1 are each reenacted and amended to read as follows:

(1) A court may order a child subject to a petition under RCW 28A.225.035 to do one or more of the following:

(a) Attend the child's current school, and set forth minimum attendance requirements, including suspensions;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Be referred to a community truancy board, if available; or

(e) Submit to testing for the use of controlled substances or alcohol based on a determination that such testing is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance

law and, if any test ordered under this subsection indicates the use of controlled substances or alcohol, order the minor to abstain from the unlawful consumption of controlled substances or alcohol and adhere to the recommendations of the drug assessment at no expense to the school.

(2) If the child fails to comply with the court order, the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as community ((~~service~~)) restitution. Failure by a child to comply with an order issued under this subsection shall not be subject to detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW.

(3) Any parent violating any of the provisions of either RCW 28A.225.010, 28A.225.015, or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community ((~~service~~)) restitution instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

(4) If a child continues to be truant after entering into a court-approved order with the truancy board under RCW 28A.225.035, the juvenile court shall find the child in contempt, and the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as meaningful community ((~~service~~)) restitution. Failure by a child to comply with an order issued under this subsection may not subject a child to detention for a period greater than that permitted under a civil contempt proceeding against a child under chapter 13.32A RCW.

(5) Subsections (1), (2), and (4) of this section shall not apply to a six or seven year-old child required to attend public school under RCW 28A.225.015.

**Sec. 30.** RCW 35.21.209 and 1984 c 24 s 1 are each amended to read as follows:

The legislative authority of a city or town may purchase liability insurance in an amount it deems reasonable to protect the city or town, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of court-ordered community ((~~service~~)) restitution, and may elect to treat offenders as employees and/or workers under Title 51 RCW.

**Sec. 31.** RCW 35A.21.220 and 1984 c 24 s 2 are each amended to read as follows:



The legislative authority of a code city may purchase liability insurance in an amount it deems reasonable to protect the code city, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of court-ordered community ((~~service~~)) restitution, and may elect to treat offenders as employees and/or workers under Title 51 RCW.

**Sec. 32.** RCW 36.16.139 and 1984 c 24 s 3 are each amended to read as follows:

The legislative authority of a county may purchase liability insurance in an amount it deems reasonable to protect the county, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of community ((~~service~~)) restitution imposed by court order or pursuant to RCW 13.40.080. The legislative authority of a county may elect to treat offenders as employees and/or workers under Title 51 RCW.

**Sec. 33.** RCW 46.16.381 and 2001 c 67 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. 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))~~ restitution for a nonprofit organization that serves the disabled community or persons having disabling diseases; or

(b) Any other community ~~((service))~~ restitution 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.

**\*Sec. 34. RCW 46.20.031 and 1999 c 6 s 7 are each amended to read as follows:**

***The department shall not issue a driver's license to a person:***

***(1) Who is under the age of sixteen years;***

***(2) Whose driving privilege has been withheld unless and until the department may authorize the driving privilege under RCW 46.20.311;***

***(3) Who has been classified as an alcoholic, drug addict, alcohol abuser, or drug abuser by a program approved by the department of social and health services. The department may, however, issue a license if the person:***

***(a) Has been granted a deferred prosecution under chapter 10.05 RCW; or***

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

*(4) Who has previously been adjudged to be mentally ill or insane, or to be incompetent due to a mental disability or disease. The department shall, however, issue a license to the person if he or she otherwise qualifies and:*

*(a) Has been restored to competency by the methods provided by law; or*

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

*(5) Who has not passed the driver's licensing examination required by RCW 46.20.120 and 46.20.305, if applicable;*

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

*(7) Who is unable to safely operate a motor vehicle upon the highways due to a physical or mental disability. The department's conclusion that a person is barred from licensing under this subsection must be reasonable and be based upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction;*

*(8) Who has violated his or her written promise to appear, respond, or comply regarding a notice of infraction issued for abandonment of a vehicle in violation of RCW 46.55.105, unless:*

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

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

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

*\*Sec. 34 was vetoed. See message at end of chapter.*

Sec. 35. RCW 46.30.020 and 1991 sp.s. c 25 s 1 are each amended to read as follows:

(1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16 RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community ((service)) restitution.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court, submit by mail to the court written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.16.305(1), governed by RCW 46.16.020, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW.

**Sec. 36.** RCW 46.63.110 and 2001 c 289 s 2 are each amended to read as follows:

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(3) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance,

regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(4) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(5) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty, and the department shall suspend the person's driver's license or driving privilege until the penalty has been paid and the penalty provided in subsection (3) of this section has been paid.

(6) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed a fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040.

(7)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of ten dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a community ((~~service~~)) restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (7) by participation in the community ((~~service~~)) restitution program.

(b) Revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

**Sec. 37.** RCW 46.63.120 and 1979 ex.s. c 136 s 14 are each amended to read as follows:

(1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may include in the order the imposition of any penalty authorized by the provisions of this chapter for the commission of an infraction. The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request the court may order performance of a number of hours of community ((service)) restitution in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

**Sec. 38.** RCW 46.64.055 and 2001 c 289 s 3 are each amended to read as follows:

(1) In addition to any other penalties imposed for conviction of a violation of this title that is a misdemeanor, gross misdemeanor, or felony, the court shall impose an additional penalty of fifty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a community ((service)) restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this section by participation in the community ((service)) restitution program.

(2) Revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this section to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this section must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

**Sec. 39.** RCW 51.12.035 and 2001 c 138 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))~~ restitution 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.

**Sec. 40.** RCW 51.12.045 and 1986 c 193 s 1 are each amended to read as follows:

Offenders performing community ~~((services))~~ restitution pursuant to court order or under RCW 13.40.080 may be deemed employees and/or workers under this title at the option of the state, county, city, town, or nonprofit organization under whose authorization the ~~((services are))~~ community restitution is performed. Any premiums or assessments due under this title for community ~~((services))~~ restitution work shall be the obligation of and be paid for by the state agency, county, city, town, or nonprofit organization for which the offender performed the community ~~((services))~~ restitution. Coverage commences when a state agency, county, city, town, or nonprofit organization has given notice to the director that it wishes to cover offenders performing community ~~((services))~~ restitution before the occurrence of an injury or contraction of an occupational disease.

**Sec. 41.** RCW 66.20.200 and 1994 c 201 s 1 are each amended to read as follows:

It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall

be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community ~~((service))~~ restitution shall require not fewer than twenty-five hours of ~~((such service))~~ community restitution. Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, as now or hereafter amended, to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community ~~((service))~~ restitution shall require not fewer than twenty-five hours of ~~((such service))~~ community restitution.

**Sec. 42.** RCW 66.44.291 and 1987 c 101 s 1 are each amended to read as follows:

Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community ~~((service))~~ restitution shall require not fewer than twenty-five hours of ~~((such service))~~ community restitution.

**Sec. 43.** RCW 66.44.325 and 1987 c 101 s 2 are each amended to read as follows:

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community ~~((service))~~ restitution shall require not fewer than twenty-five hours of ~~((such service))~~ community restitution: PROVIDED, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction.

**Sec. 44.** RCW 69.50.425 and 1989 c 271 s 105 are each amended to read as follows:

A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community

~~((service))~~ restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

**Sec. 45.** RCW 70.93.060 and 2001 c 139 s 1 are each amended to read as follows:

(1) It is a violation of this section to abandon a junk vehicle upon any property. 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 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 misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. 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.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. 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.

(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)) restitution 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. 46.** RCW 70.93.250 and 1998 c 257 s 10 and 1998 c 245 s 128 are each reenacted and amended to read as follows:

(1) The department shall provide funding to local units of government to establish, conduct, and evaluate community ((service)) restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70.93.220, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. The department shall report to the appropriate standing committees of the legislature by December of even-numbered years on the effectiveness of local government waste reduction, litter, and recycling programs funded under this section.

**Sec. 47.** RCW 70.155.080 and 1998 c 133 s 2 are each amended to read as follows:

(1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community ((service)) restitution, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of

eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section.

**Sec. 48.** RCW 72.09.060 and 1989 c 185 s 3 are each amended to read as follows:

The department of corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) correctional industries, (2) prisons and other custodial institutions and (3) probation, parole, community ~~((service))~~ restitution, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his or her staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies.

**Sec. 49.** RCW 72.09.100 and 1995 1st sp.s. c 19 s 33 are each amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) **CLASS I: FREE VENTURE INDUSTRIES.** The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers. The correctional industries board of directors shall review these proposed industries before the department contracts to provide such products or services. The review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community and labor market.

The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of

correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) **CLASS II: TAX REDUCTION INDUSTRIES.** Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations. The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons. Correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors. The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

Security and custody services shall be provided without charge by the department of corrections.

Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

Subject to approval of the correctional industries board, provisions of RCW 41.06.380 prohibiting contracting out work performed by classified employees shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) **CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(a) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(b) Whenever possible, to provide forty hours of work or work training per week.

(c) Whenever possible, to offset tax and other public support costs.

Supervising, management, and custody staff shall be employees of the department.

All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) **CLASS IV: COMMUNITY WORK INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) **CLASS V: COMMUNITY ((SERVICE)) RESTITUTION PROGRAMS.** Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community ((service)) restitution order as ordered by the sentencing court.

Employment shall be in a community ((service)) restitution program operated by the state, local units of government, or a nonprofit agency.

To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs.

**Sec. 50.** RCW 72.09.260 and 1990 c 66 s 2 are each amended to read as follows:

(1) The department shall assist local units of government in establishing community ((service)) restitution programs for litter cleanup. Community ((service)) restitution litter cleanup programs must include the following: (a) Procedures for documenting the number of community ((service)) restitution hours worked in litter cleanup by each offender; (b) plans to coordinate litter cleanup activities with local governmental entities responsible for roadside and park maintenance; (c) insurance coverage for offenders during litter cleanup activities pursuant to RCW 51.12.045; (d) provision of adequate safety equipment and, if needed, weather protection gear; and (e) provision for including felons and misdemeanants in the program.

(2) Community ((service)) restitution programs established under this section shall involve, but not be limited to, persons convicted of nonviolent, drug-related offenses.

(3) Nothing in this section shall diminish the department's authority to place offenders in community ((service)) restitution programs or to determine the suitability of offenders for specific programs.

(4) As used in this section, "litter cleanup" includes cleanup and removal of solid waste that is illegally dumped.

**Sec. 51.** 1990 c 66 s 1 (uncodified) is amended to read as follows:

The legislature finds that the amount of litter along the state's roadways is increasing at an alarming rate and that local governments often lack the human and fiscal resources to remove litter from public roads. The legislature also finds that persons committing nonviolent, drug-related offenses can often be productively engaged through programs to remove litter from county and municipal roads. It is therefore the intent of the legislature to assist local units of government in establishing community ((service)) restitution programs for litter cleanup and to establish a funding source for such programs.

**Sec. 52.** RCW 79A.05.050 and 1996 c 263 s 3 are each amended to read as follows:

(1) The commission shall establish a policy and procedures for supervising and evaluating community ((service)) restitution activities that may be imposed under RCW 70.93.060(3) including a description of what constitutes satisfactory completion of community ((service)) restitution.

(2) The commission shall inform each state park of the policy and procedures regarding community ((service)) restitution activities, and each state park shall then notify the commission as to whether or not the park elects to participate in the community ((service)) restitution program. The commission shall transmit a list notifying the district courts of each state park that elects to participate.

**NEW SECTION.** **Sec. 53.** This act takes effect July 1, 2002.



Passed the Senate February 13, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 27, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2002.

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

"I am returning herewith, without my approval as to section 34, Senate Bill No. 6627 entitled:

"AN ACT Relating to community service;"

Senate Bill No. 6627 changes references to "community service" in the criminal sentencing code to "community restitution."

Section 34 of this bill amends language that is repealed in section 3 of another bill, Substitute Senate Bill No. 6748. The Code Reviser has informed my office that signing both sections into law would require publishing both in the Revised Code of Washington, causing confusion and making corrective legislation necessary. Section 34 serves no purpose in light of the repeal of the affected language in the other bill.

For these reasons, I have vetoed section 34 of Senate Bill No. 6627.

With the exception of section 34, Senate Bill No. 6627 is approved."

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## CHAPTER 176

[Second Substitute House Bill 1477]

### EMERGENCY COMMUNICATIONS—TAX

AN ACT Relating to the imposition of taxes by counties for emergency communication systems and facilities; and adding a new section to chapter 82.14 RCW.

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

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

(1) A county legislative authority may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of emergency communication systems and facilities.

(4) Counties are authorized to develop joint ventures to collocate emergency communication systems and facilities.

(5) Prior to submitting the tax authorization in subsection (2) of this section to the voters in a county that provides emergency communication services to a governmental agency pursuant to a contract, the parties to the contract shall review and negotiate or affirm the terms of the contract.

(6) Prior to submitting the tax authorized in subsection (2) of this section to the voters, a county with a population of more than five hundred thousand in which any city over fifty thousand operates emergency communication systems and facilities shall enter into an interlocal agreement with the city to determine distribution of the revenue provided in this section.

Passed the House February 19, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

**CHAPTER 177**

[Substitute House Bill 1521]

**LOCAL LEASEHOLD EXCISE TAX ACCOUNT—DISTRIBUTIONS**

AN ACT Relating to authorizing the state treasurer to distribute interest from the local leasehold excise tax account; and amending RCW 82.29A.090.

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

**Sec. 1.** RCW 82.29A.090 and 1981 2nd ex.s. c 4 s 9 are each amended to read as follows:

(1) Bimonthly the state treasurer shall make distribution from the local leasehold excise tax account to the counties and cities the amount of tax collected on behalf of each county or city.

(2) Earnings accrued through July 31, 2002, shall be disbursed to counties and cities proportionate to the amount of tax collected annually on behalf of each county or city.

(3) After July 31, 2002, bimonthly the state treasurer shall disburse earnings from the local leasehold excise tax account to the counties or cities proportionate to the amount of tax collected on behalf of each county or city.

(4) The state treasurer shall make the distribution under this section without appropriation.

Passed the House January 23, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

**CHAPTER 178**

[Second Substitute House Bill 1531]

**TAXATION—LODGING**

AN ACT Relating to the taxation of lodging; amending RCW 82.04.050, 67.28.180, 67.28.181, 67.40.090, and 36.100.040; creating a new section; and declaring an emergency.

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

**Sec. 1.** RCW 82.04.050 and 2000 2nd sp.s. c 4 s 23 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of

coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and 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, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity

defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the

environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving 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 article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2).

**Sec. 2.** RCW 67.28.180 and 1997 c 220 s 501 are each amended to read as follows:

(1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging (~~((by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. PROVIDED, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same))~~) that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and

issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax

so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

- (i) A legally constituted and working board of directors;
- (ii) A record of artistic, heritage, or cultural accomplishments;
- (iii) Been in existence and operating for at least two years;



(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected.

*\*Sec. 3. RCW 67.28.181 and 1998 c 35 s 1 are each amended to read as follows:*

*(1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.*

*(2) Notwithstanding subsection (1) of this section:*

*(a) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, such total authorization shall continue through January 1, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1999.*

*(b) If a city or town, other than a municipality imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the city or town may not impose a tax under this section, except that a municipality located in more than one county may impose a tax under this section in each county at the maximum rate that would have been allowed as of March 11, 1998.*

*(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.*

*(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.*

*(3) Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event.*

\*Sec. 3 was vetoed. See message at end of chapter.

Sec. 4. RCW 67.40.090 and 1995 c 386 s 15 are each amended to read as follows:

(1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging (~~by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property~~) that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than sixty lodging units. (~~It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same.~~) The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, and until bonds and all other borrowings authorized under RCW 67.40.030 are retired, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) Except as otherwise provided in (d) of this subsection, on and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section.

**Sec. 5.** RCW 36.100.040 and 1995 c 396 s 4 are each amended to read as follows:

A public facilities district may impose an excise tax on the sale of or charge made for the furnishing of lodging (~~(by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property)~~) that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than forty lodging units. However, if a public facilities district has not imposed such an excise tax prior to December 31, 1995, the public facilities district may only impose the excise tax if a ballot proposition authorizing the imposition of the tax has been approved by a simple majority vote of voters of the public facilities district voting on the proposition.

The rate of the tax shall not exceed two percent and the proceeds of the tax shall only be used for the acquisition, design, construction, remodeling, maintenance, equipping, reequipping, repairing, and operation of its public facilities. This excise tax shall not be imposed until the district has approved the proposal to acquire, design, and construct the public facilities.

A public facilities district may not impose the tax authorized in this section if, after the tax authorized in this section was imposed, the effective combined rate of state and local excise taxes, including sales and use taxes and excise taxes on lodging, imposed on the sale of or charge made for furnishing of lodging in any jurisdiction in the public facilities district exceeds eleven and one-half percent.

**NEW SECTION. Sec. 6.** This act applies retroactively to events occurring on and after September 1, 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 House March 14, 2002.

Passed the Senate March 13, 2002.

Approved by the Governor March 27, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2002.

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

"I am returning herewith, without my approval as to section 3, Second Substitute House Bill No. 1531 entitled:

"AN ACT Relating to the taxation of lodging;"

Second Substitute House Bill No. 1531 makes the application of the sales tax to extended lodging more flexible, and allows it to more easily accommodate real world business practices and needs.

Section 3 of the bill was intended to allow a municipality located in more than one county to impose the special local lodging tax in each county at the maximum rate. However, due to a drafting error, it had no effect. In addition, other statutes would need to be changed in order to achieve the intent of section 3.

I am directing the Department of Revenue to work with the concerned parties to perfect language for legislation that can be introduced by those parties in the next legislative session.

For these reasons, I have vetoed section 3 of Second Substitute House Bill No. 1531.

With the exception of section 3, Second Substitute House Bill No. 1531 is approved."

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## CHAPTER 179

[Substitute House Bill 2031]

### TAXATION—PAYPHONE SERVICES

AN ACT Relating to limiting the taxation of payphone services; amending RCW 35.21.710, 35.21.712, 35A.82.050, and 35A.82.055; and providing an effective date.

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

**Sec. 1.** RCW 35.21.710 and 1983 2nd ex.s. c 3 s 33 are each amended to read as follows:

Any city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. The taxing authority granted to cities for taxes upon business activities measured by gross receipts or gross income from sales shall not exceed a rate of .0020; except that any city with an adopted ordinance at a higher rate, as of January 1, 1982 shall be limited to a maximum increase of ten percent of the January 1982 rate, not to exceed an annual incremental increase of two percent of current rate: **PROVIDED**, That any adopted ordinance which classifies according to different types of business or services shall be subject to both the ten percent and the two percent annual incremental increase limitation on each tax rate: **PROVIDED FURTHER**, That all surtaxes on business and occupation classifications in effect as of January 1, 1982, shall expire no later than December 31, 1982, or by expiration date established by local ordinance. Cities which impose a license fee or tax upon business activities consisting of the

making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales shall be required to submit an annual report to the state auditor identifying the rate established and the revenues received from each fee or tax. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.04.065, or the providing of payphone service, shall be ~~((deemed to be the))~~ subject to tax at the same rate as business activities consisting of the making of retail sales of tangible personal property. As used in this section, "payphone service" means making telephone service available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls, when the telephone can only be activated by inserting coins, calling collect, using a calling card or credit card, or dialing a toll-free number, and the provider of the service owns or leases the telephone equipment but does not own the telephone line providing the service to that equipment and has no affiliation with the owner of the telephone line.

**Sec. 2.** RCW 35.21.712 and 1983 2nd ex.s. c 3 s 35 are each amended to read as follows:

Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710.

**Sec. 3.** RCW 35A.82.050 and 1983 2nd ex.s. c 3 s 34 are each amended to read as follows:

Any code city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.04.065, or the providing of payphone service as defined in RCW 35.21.710, shall be ~~((deemed to be the))~~ subject to tax at the same rate as business activities consisting of the making of retail sales of tangible personal property.

**Sec. 4.** RCW 35A.82.055 and 1983 2nd ex.s. c 3 s 36 are each amended to read as follows:

Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is

measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the code city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710.

**NEW SECTION.** Sec. 5. This act takes effect July 1, 2002.

Passed the House February 15, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 180

[House Bill 2496]

### FIRE PROTECTION DISTRICTS—TAXES

AN ACT Relating to fire protection district property taxes; amending RCW 84.52.052 and 52.16.130; adding a new section to chapter 84.52 RCW; and providing a contingent effective date.

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

**Sec. I.** RCW 84.52.052 and 1996 c 230 s 1615 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district, except school districts and fire protection districts, in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, water-sewer district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, rural partial-county library district, intercounty rural library district, (~~fire protection district~~,) cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, or cultural arts, stadium, and convention district.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to

enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

NEW SECTION. **Sec. 2.** A new section is added to chapter 84.52 RCW to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by a fire protection district, when authorized so to do by the voters of a fire protection district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state. Elections for taxes shall be held in the year in which the levy is made, or in the case of propositions authorizing two-year through four-year levies for maintenance and operation support of a fire district, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of fire district facilities, in the year in which the first annual levy is made. Once additional tax levies have been authorized for maintenance and operation support of a fire protection district for a two-year through four-year period, no further additional tax levies for maintenance and operation support of the district for that period may be authorized.

A special election may be called and the time fixed by the fire protection district commissioners, by giving notice by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing the excess levy shall be submitted in a form as to enable the voters favoring the proposition to vote "yes" and those opposed to vote "no."

**Sec. 3.** RCW 52.16.130 and 1989 c 63 s 27 are each amended to read as follows:

To carry out the purposes for which fire protection districts are created, the board of fire commissioners of a district may levy each year, in addition to the levy or levies provided in RCW 52.16.080 for the payment of the principal and interest of any outstanding general obligation bonds, an ad valorem tax on all taxable property located in the district not to exceed fifty cents per thousand dollars of assessed value: **PROVIDED**, That in no case may the total general levy for all purposes, except the levy for the retirement of general obligation bonds, exceed one dollar per thousand dollars of assessed value. Levies in excess of one dollar per thousand dollars of assessed value or in excess of the aggregate dollar rate limitations or both may be made for any district purpose when so authorized at a special election under ~~((RCW 84.52.052))~~ section 2 of this act. Any such tax when levied shall be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate district fund or funds as provided by law, and shall be paid out on warrants of the auditor of the county in which all, or the largest portion of, the district is located, upon authorization of the board of fire commissioners of the district.



**NEW SECTION. Sec. 4.** This act takes effect January 1, 2003, if the proposed amendment to Article VII, section 2 of the state Constitution authorizing multiyear excess property tax levies is validly submitted to and approved by the voters at the next general election. If the proposed amendment is not approved, this act is void in its entirety.

Passed the House March 11, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 181

[House Bill 2639]

### TAXATION—INTERNET SERVICE PROVIDERS

AN ACT Relating to extending the prohibition on taxes or fees specific to internet service providers; and amending RCW 35.21.717.

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

**Sec. 1.** RCW 35.21.717 and 1999 c 307 s 1 are each amended to read as follows:

Until July 1, ~~((2002))~~ 2004, a city or town may not impose any new taxes or fees specific to internet service providers. A city or town may tax internet service providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification. For the purposes of this section, "internet service" has the same meaning as in RCW 82.04.297.

Passed the House February 17, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 182

[House Bill 2715]

### CONVENTION AND TRADE CENTER—MARKETING

AN ACT Relating to marketing funds for the state convention and trade center; and amending RCW 67.40.120.

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

**Sec. 1.** RCW 67.40.120 and 1997 c 452 s 20 are each amended to read as follows:

The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. ~~((Any contract with the Seattle-King county convention and visitors bureau shall include, but is not limited to, the following condition: Each dollar in convention and trade center operations account funds~~

~~provided to the Seattle-King county convention and visitors bureau shall be matched by at least one dollar and ten cents in nonstate funds. "Nonstate funds" does not include funds received under chapter 67.28 RCW:))~~

Passed the House February 14, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 183

[House Bill 2285]

### DYED SPECIAL FUEL

AN ACT Relating to dyed special fuel; amending RCW 82.38.020, 82.38.030, 82.38.065, and 82.38.170; and prescribing penalties.

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

**Sec. 1.** RCW 82.38.020 and 2001 c 270 s 4 are each amended to read as follows:

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

(1) "Blended special fuel" means a mixture of undyed diesel fuel and another liquid, other than a de minimis amount of the liquid, that can be used as a fuel to propel a motor vehicle.

(2) "Blender" means a person who produces blended special fuel outside the bulk transfer-terminal system.

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW, which bond is payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter.

(4) "Bulk transfer-terminal system" means the special fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Special fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Special fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of special fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of special fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

(8) "Dyed special fuel user" means a person authorized by the internal revenue code to operate a motor vehicle on the highway using dyed special fuel, in which the use is not exempt from the special fuel tax.

(9) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; omission; misrepresentation of fact; or other act of deception; (~~(or)~~)

(b) An intentional: (~~(Omission;)~~) Failure to file a return or report; or other act of deception; or

(c) The unlawful use of dyed special fuel.

(10) "Export" means to obtain special fuel in this state for sales or distribution outside the state.

(11) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(12) "Import" means to bring special fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(13) "International fuel tax agreement licensee" means a special fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(14) "Lessor" means a person: (a) Whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public; and (b) who maintains established places of business and whose lease or rental contracts require the motor vehicles to be returned to the established places of business.

(15) "Licensee" means a person holding a license issued under this chapter.

(16) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

(17) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(18) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(19) "Position holder" means a person who holds the inventory position in special fuel, as reflected by the records of the terminal operator. A person holds the inventory position in special fuel if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services at a terminal with respect to special fuel. "Position holder" includes a terminal operator that owns special fuel in their terminal.

(20) "Rack" means a mechanism for delivering special fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(21) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(22) "Removal" means a physical transfer of special fuel other than by evaporation, loss, or destruction.

(23) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that

it does not include motor vehicle fuel as defined in chapter 82.36 RCW, nor does it include dyed special fuel as defined by federal regulations, unless the use is in violation of this chapter. (~~However, if the federal regulations authorize dyed special fuel to be used in highway vehicles, that usage is considered taxable under this chapter, unless otherwise exempted.~~) If a person holds for sale, sells, purchases, or uses any dyed special fuel in violation of this chapter, all dyed special fuel held for sale, sold, purchased, stored, or used by that person is considered special fuel, and the person is subject to all presumptions, reporting, and recordkeeping requirements and other obligations which apply to special fuel, along with payment of any applicable taxes, penalties, or interest for illegal use.

(24) "Special fuel distributor" means a person who acquires special fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(25) "Special fuel exporter" means a person who purchases special fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state.

(26) "Special fuel importer" means a person who imports special fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the special fuel at the time of importation is the importer.

(27) "Special fuel supplier" means a person who holds a federal certificate issued under the internal revenue code and authorizes the person to tax-free transactions on special fuel in the bulk transfer-terminal system.

(28) "Special fuel user" means a person engaged in uses of special fuel that are not specifically exempted from the special fuel tax imposed under this chapter.

(29) "Terminal" means a special fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable special fuel is removed at a rack.

(30) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(31) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable special fuel is transferred from one licensed supplier to another licensed supplier under an exchange or buy-sell agreement whereby the supplier that is the position holder agrees to deliver taxable special fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

**Sec. 2.** RCW 82.38.030 and 2001 c 270 s 6 are each amended to read as follows:

(1) There is hereby levied and imposed upon special fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 on each gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) The tax imposed by subsection (1) of this section is imposed when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(h) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

~~((h))~~ (i) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk transfer-terminal system.

(3) The tax imposed by this chapter, if required to be collected by the licensee, is held in trust by the licensee until paid to the department, and a licensee 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 is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the

tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

**Sec. 3.** RCW 82.38.065 and 1998 c 176 s 56 are each amended to read as follows:

A person may ~~((not))~~ operate or maintain a licensed or required to be licensed motor vehicle ~~((on a public highway of this state))~~ with dyed special fuel in the fuel supply tank ~~((unless))~~ only if the use is authorized by the internal revenue code and the person is either the holder of an uncanceled dyed special fuel user license issued ~~((to him or her by the department))~~ or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the person is the holder of an uncanceled dyed special fuel user license issued under this chapter. The special fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special fuel authorized by the internal revenue code to operate on-highway motor vehicles using dyed special fuel, unless the use is exempt from the special fuel tax. It is unlawful for any person to sell, use, hold for sale, or hold for intended use dyed special fuel in a manner in violation of this chapter.

**Sec. 4.** RCW 82.38.170 and 1998 c 176 s 70 are each amended to read as follows:

(1) If any licensee fails to pay any taxes collected or due the state of Washington within the time prescribed by RCW 82.38.150 and 82.38.160, the licensee shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any licensee is deficient it may proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any licensee, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report required under this chapter, the department may, on the basis of information available to it, determine the tax liability of the licensee for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any licensee establishes by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any special fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within five years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be determined or within five years after the return is filed, whichever period expires the later.

(9) Any licensee against whom an assessment is made under the provisions of subsection(§) (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the licensee of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the licensee has so requested in his or her petition, shall grant such licensee an oral hearing and give the licensee ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the licensee of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by certified or registered mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the licensee at his or her address as the same appears in the records of the department.

(11) Any licensee who has had the licensee's special fuel license revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

(13) Unless the use is exempt from the special fuel tax, or expressly authorized by the internal revenue code and this chapter, a person ((using)) having dyed special fuel in the ((propulsion)) fuel supply tank of a motor vehicle ((upon the highways of this state)) that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.

(14) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.

(15) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.

~~((15))~~ (16) The Washington state patrol shall, by January 1, 1999, develop and implement procedures for collection, analysis, and storage of fuel samples collected under this chapter.

~~((16))~~ (17) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (13) of this section.

Passed the House February 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 184

[Senate Bill 5082]

SALES AND USE TAX—RURAL COUNTY DEFINITION



AN ACT Relating to defining rural counties for purposes of sales and use tax for public facilities; and amending RCW 82.14.370.

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

**Sec. 1.** RCW 82.14.370 and 1999 c 311 s 101 are each amended to read as follows:

(1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.08 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, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of financing public facilities in rural counties. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county. In implementing this section, the county shall consult with cities, towns, and port districts located within the county. For the purposes of this section, "public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

(4) No tax may be collected under this section before July 1, 1998. No tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

Passed the Senate March 13, 2002.  
 Passed the House March 13, 2002.  
 Approved by the Governor March 27, 2002.  
 Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 185

[House Bill 2332]

### VOTER REGISTRATION—INSTITUTIONS OF HIGHER EDUCATION

AN ACT Relating to a statewide voter registration data base; amending RCW 29.07.025; adding a new section to chapter 29.04 RCW; creating a new section; providing an effective date; 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 recognizes that national task forces studying election issues have identified statewide voter registration systems as important tools for protecting the integrity of elections, and it is likely that federal funds will be made available for states that employ statewide voter registration systems. Therefore, the legislature finds a need for the state of Washington to begin the process of creating such a system.*

\*Sec. 1 was vetoed. See message at end of chapter.

**\*NEW SECTION.** *Sec. 2. A new section is added to chapter 29.04 RCW to read as follows:*

*(1) The office of the secretary of state shall work in conjunction with the county auditors of the state of Washington to initiate the creation of a statewide voter registration data base. The secretary of state shall identify a group of voter registration experts whose responsibility will be to work on a design for the voter registration data base system. The secretary of state shall report back the findings of this group to the legislature no later than February 1, 2003.*

*(2) Among the intended goals the voter registration data base must be designed to accomplish at a minimum, are the following:*

- (a) Identify duplicate voter registrations;*
- (b) Identify suspected duplicate voters;*
- (c) Screen against the department of corrections data base to aid in the cancellation of voter registration of felons;*
- (d) Provide up-to-date signatures of voters for the purposes of initiative signature checking;*
- (e) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;*
- (f) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities, if sufficient funds are available;*
- (g) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses;*
- (h) Ensure that each county shall maintain legal control of the registration records for that county.*

\*Sec. 2 was vetoed. See message at end of chapter.

**Sec. 3.** RCW 29.07.025 and 1994 c 57 s 10 are each amended to read as follows:

(1) Each state agency designated under RCW 29.07.420 shall provide voter registration services for employees and the public within each office of that agency.

(2) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available.

(3) The secretary of state shall design and provide standard voter registration forms for use by these state agencies.

(4) Each institution of higher education shall put in place an active prompt on its course registration web site, or similar web site that students actively and regularly use, that, if selected, will link the student to the secretary of state's voter registration web site. The prompt must ask the student if he or she wishes to register to vote.

***\*NEW SECTION. Sec. 4. Sections 1 and 2 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 May 1, 2002.***

\*Sec. 4 was vetoed. See message at end of chapter.

***\*NEW SECTION. Sec. 5. Sections 1 and 2 of this act expire January 1, 2005.***

\*Sec. 5 was vetoed. See message at end of chapter.

Passed the House March 12, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2002.

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

"I am returning herewith, without my approval as to sections 1, 2, 4 and 5, House Bill No. 2332 entitled:

"AN ACT Relating to a statewide voter registration data base;"

House Bill No. 2332 requires colleges and universities to place on their course registration web sites a link to the secretary of state's voter registration web site.

Sections 1, 2, 4 and 5 of this bill are identical to and duplicative of provisions of Senate Bill No. 6324, which I signed into law on March 12, 2002.

For these reasons, I have vetoed sections 1, 2, 4 and 5 of House Bill No. 2332.

With the exception of sections 1, 2, 4 and 5, House Bill No. 2332 is approved."

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## CHAPTER 186

[House Bill 2386]

RESIDENT STUDENTS—NATIONAL GUARD MEMBERS

AN ACT Relating to classifying members of the Washington national guard as resident students; amending RCW 28B.15.012; reenacting and amending RCW 28B.15.012 and 28B.101.040; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 28B.15.012 and 2000 c 160 s 1 and 2000 c 117 s 1 are each reenacted and amended to read as follows:

Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(f) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

(g) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(h) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

~~((h))~~ (i) A student who meets the requirements of RCW 28B.15.0131 or 28B.15.0139: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile

of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)(~~(g)~~) (h) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter. This condition shall not apply to students from Columbia, Multnomah, Clatsop, Clackamas, or Washington county, Oregon participating in the border county pilot project under RCW 28B.80.806, 28B.80.807, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

**Sec. 2.** RCW 28B.15.012 and 2000 c 117 s 2 are each amended to read as follows:

Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(f) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

(g) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(h) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

~~((h))~~ (i) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)~~((g))~~ (h) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States

under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

**Sec. 3.** RCW 28B.101.040 and 1993 sp.s. c 18 s 35 and 1993 c 385 s 2 are each reenacted and amended to read as follows:

Grants may be used by eligible participants to attend any public or private college or university in the state of Washington that is accredited by an accrediting association recognized by rule of the higher education coordinating board and that has an existing unused capacity. Grants shall not be used to attend any branch campus or educational program established under chapter 28B.45 RCW. The participant shall not be eligible for a grant if it will be used for any programs that include religious worship, exercise, or instruction or to pursue a degree in theology. Each participating student may receive up to two thousand five hundred dollars per academic year, not to exceed the student's demonstrated financial need for the course of study. Resident students as defined in RCW 28B.15.012(2)((e)) (f) are not eligible for grants under this chapter.

**NEW SECTION. Sec. 4.** Section 1 of this act expires June 30, 2002.

**NEW SECTION. Sec. 5.** Section 2 of this act takes effect June 30, 2002.

Passed the House March 9, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 187

[Substitute Senate Bill 5166]

### HIGHER EDUCATION—MEMBER INSTITUTIONS

AN ACT Relating to branches of member institutions of accrediting associations recognized by rule of the higher education coordinating board; and amending RCW 28B.10.802 and 28B.12.030.

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

**Sec. 1.** RCW 28B.10.802 and 1989 c 254 s 2 are each amended to read as follows:

As used in RCW 28B.10.800 through 28B.10.824:

(1) "Institutions of higher education" shall mean (1) any public university, college, community college, or vocational-technical institute operated by the state of Washington or any political subdivision thereof or (2) any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an accrediting association recognized by rule of the board for the purposes of this section: **PROVIDED**, That any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association, or a branch of a member institution of an accrediting association recognized by rule of the board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students: **PROVIDED FURTHER**, That no institution of higher education shall be eligible to participate in a student financial aid program unless it agrees to and complies with program rules and regulations adopted pursuant to RCW 28B.10.822.

(2) The term "financial aid" shall mean loans and/or grants to needy students enrolled or accepted for enrollment as a student at institutions of higher education.

(3) The term "needy student" shall mean a post high school student of an institution of higher learning as defined in subsection (1) of this section who demonstrates to the board the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester or quarter.

(4) The term "disadvantaged student" shall mean a post high school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full time student in an institution of higher learning, who would otherwise qualify as a needy student, and who is attending an institution of higher learning under an established program designed to qualify the student for enrollment as a full time student.

(5) "Commission" or "board" shall mean the higher education coordinating board.

**Sec. 2.** RCW 28B.12.030 and 1994 c I30 s 3 are each amended to read as follows:

As used in this chapter, the following words and terms shall have the following meanings, unless the context shall clearly indicate another or different meaning or intent:

(1) The term "needy student" shall mean a student enrolled or accepted for enrollment at a post-secondary institution who, according to a system of need



analysis approved by the higher education coordinating board, demonstrates a financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter.

(2) The term "eligible institution" shall mean any post-secondary institution in this state accredited by the Northwest Association of Schools and Colleges, or a branch of a member institution of an accrediting association recognized by rule of the board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, or any public technical college in the state.

Passed the Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 188

[Engrossed House Bill 2288]

### ENVIRONMENTAL MITIGATION SITES

AN ACT Relating to environmental mitigation sites; and adding a new section to chapter 47.12 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 47.12 RCW to read as follows:

(1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit groups incorporated in this state that are organized for environmental conservation purposes, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

(2) Tribal governments shall only be eligible to participate in an exchange agreement if they:

(a) Provide the department with a valid waiver of their tribal sovereign immunity from suit. The waiver must allow the department to enforce the terms of the exchange agreement or quitclaim deed in state court; and

(b) Agree that the property shall not be placed into trust status.

(3) The conveyances must be by quitclaim deed executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable

permits, laws, and regulations pertaining to the maintenance and operation of the mitigation site.

Passed the House February 8, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 189

[Engrossed Substitute Senate Bill 5748]

### TRANSPORTATION—LAND USE PLANNING

AN ACT Relating to integration of transportation and land use planning; amending RCW 35.63.060, 35A.63.060, 47.05.051, and 47.06.040; and adding a new section to chapter 47.26 RCW.

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

**Sec. 1.** RCW 35.63.060 and 1988 c 127 s 1 are each amended to read as follows:

The commission may act as the research and fact finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by its council or board, or by the state with the approval of its council or board. The commission, upon such request or authority may also:

(1) Make inquiries, investigations, and surveys concerning the resources of the county, including but not limited to the potential for solar energy development and alternative means to encourage and protect access to direct sunlight for solar energy systems;

(2) Assemble and analyze the data thus obtained and formulate plans for the conservation of such resources and the systematic utilization and development thereof;

(3) Make recommendations from time to time as to the best methods of such conservation, utilization, and development;

(4) Cooperate with other commissions and with other public agencies of the municipality, state and United States in such planning, conservation, and development; and

(5) In particular cooperate with and aid the state within its territorial limits in the preparation of the state master plan provided for in RCW 43.21A.350 and in advance planning of public works programs.

In carrying out its powers and duties, the commission should demonstrate how land use planning is integrated with transportation planning.

**Sec. 2.** RCW 35A.63.060 and 1967 ex.s. c 119 s 35A.63.060 are each amended to read as follows:

Every code city, by ordinance, shall direct the planning agency to prepare a comprehensive plan for anticipating and influencing the orderly and coordinated development of land and building uses of the code city and its environs. The

comprehensive plan may be prepared as a whole or in successive parts. The plan should integrate transportation and land use planning.

**Sec. 3.** RCW 47.05.051 and 2002 c 5 s 406 (ESB 2304) are each amended to read as follows:

(1) The comprehensive six-year investment program shall be based upon the needs identified in the state-owned highway component of the statewide multimodal transportation plan as defined in RCW 47.01.071(3) and priority selection systems that incorporate the following criteria:

(a) Priority programming for the preservation program shall take into account the following, not necessarily in order of importance:

(i) Extending the service life of the existing highway system, including using the most cost-effective pavement surfaces, considering:

- (A) Life-cycle cost analysis;
- (B) Traffic volume;
- (C) Subgrade soil conditions;
- (D) Environmental and weather conditions;
- (E) Materials available; and
- (F) Construction factors;

(ii) Ensuring the structural ability to carry loads imposed upon highways and bridges; and

(iii) Minimizing life cycle costs. The transportation commission in carrying out the provisions of this section may delegate to the department of transportation the authority to select preservation projects to be included in the six-year program.

(b) Priority programming for the improvement program must be based primarily upon the following, not necessarily in order of importance:

- (i) Traffic congestion, delay, and accidents;
- (ii) Location within a heavily traveled transportation corridor;
- (iii) Except for projects in cities having a population of less than five thousand persons, synchronization with other potential transportation projects, including transit and multimodal projects, within the heavily traveled corridor; and

(iv) Use of benefit/cost analysis wherever feasible to determine the value of the proposed project.

(v) Use of benefit/cost analysis wherever feasible to determine the value of the proposed project.

(c) Priority programming for the improvement program may also take into account:

- (i) Support for the state's economy, including job creation and job preservation;
- (ii) The cost-effective movement of people and goods;
- (iii) Accident and accident risk reduction;
- (iv) Protection of the state's natural environment;
- (v) Continuity and systematic development of the highway transportation network;

(vi) Consistency with local comprehensive plans developed under chapter 36.70A RCW including the following if they have been included in the comprehensive plan:

(A) Support for development in and revitalization of existing downtowns;

(B) Extent that development implements local comprehensive plans for rural and urban residential and nonresidential densities;

(C) Extent of compact, transit-oriented development for rural and urban residential and nonresidential densities;

(D) Opportunities for multimodal transportation; and

(E) Extent to which the project accommodates planned growth and economic development;

(vii) Consistency with regional transportation plans developed under chapter 47.80 RCW;

(viii) Public views concerning proposed improvements;

(ix) The conservation of energy resources;

(x) Feasibility of financing the full proposed improvement;

(xi) Commitments established in previous legislative sessions;

(xii) Relative costs and benefits of candidate programs.

(d) Major projects addressing capacity deficiencies which prioritize allowing for preliminary engineering shall be reprioritized during the succeeding biennium, based upon updated project data. Reprioritized projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(e) Major project approvals which significantly increase a project's scope or cost from original prioritization estimates shall include a review of the project's estimated revised priority rank and the level of funding provided. Projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(2) The commission may depart from the priority programming established under subsection (1) of this section: (a) To the extent that otherwise funds cannot be utilized feasibly within the program; (b) as may be required by a court judgment, legally binding agreement, or state and federal laws and regulations; (c) as may be required to coordinate with federal, local, or other state agency construction projects; (d) to take advantage of some substantial financial benefit that may be available; (e) for continuity of route development; or (f) because of changed financial or physical conditions of an unforeseen or emergent nature. The commission or secretary of transportation shall maintain in its files information sufficient to show the extent to which the commission has departed from the established priority.

(3) The commission shall identify those projects that yield freight mobility benefits or that alleviate the impacts of freight mobility upon affected communities.

**Sec. 4.** RCW 47.06.040 and 1998 c 199 s 1 are each amended to read as follows:

The department shall develop a statewide multimodal transportation plan under RCW 47.01.071(3) and in conformance with federal requirements, to ensure the continued mobility of people and goods within regions and across the state in a safe, cost-effective manner. The statewide multimodal transportation plan shall consist of:

(1) A state-owned facilities component, which shall guide state investment for state highways including bicycle and pedestrian facilities, and state ferries; and

(2) A state-interest component, which shall define the state interest in aviation, marine ports and navigation, freight rail, intercity passenger rail, bicycle transportation and pedestrian walkways, and public transportation, and recommend actions in coordination with appropriate public and private transportation providers to ensure that the state interest in these transportation modes is met.

The plans developed under each component must be consistent with the state transportation policy plan and with each other, reflect public involvement, be consistent with regional transportation planning, high-capacity transportation planning, and local comprehensive plans prepared under chapter 36.70A RCW, and include analysis of intermodal connections and choices. A primary emphasis for these plans shall be the relief of congestion, the preservation of existing investments and downtowns, ability to attract or accommodate planned population, and employment growth, the improvement of traveler safety, the efficient movement of freight and goods, and the improvement and integration of all transportation modes to create a seamless intermodal transportation system for people and goods.

In the development of the statewide multimodal transportation plan, the department shall identify and document potential affected environmental resources, including, but not limited to, wetlands, storm water runoff, flooding, air quality, fish passage, and wildlife habitat. The department shall conduct its environmental identification and documentation in coordination with all relevant environmental regulatory authorities, including, but not limited to, local governments. The department shall give the relevant environmental regulatory authorities an opportunity to review the department's environmental plans. The relevant environmental regulatory authorities shall provide comments on the department's environmental plans in a timely manner. Environmental identification and documentation as provided for in RCW 47.01.300 and this section is not intended to create a private right of action or require an environmental impact statement as provided in chapter 43.21C RCW.

**NEW SECTION. Sec. 5.** A new section is added to chapter 47.26 RCW to read as follows:

In any project funded by the transportation improvement board, except for projects in cities having a population of less than five thousand persons, and in addition to any other items required to be considered by statute, the board also shall consider the land use implications of the project, such as whether the programs and projects:

- (1) Support development in and revitalization of existing downtowns;
- (2) Implement local comprehensive plans for rural and urban residential and nonresidential densities;
- (3) Have land use planning and regulations encouraging compact development for rural and urban residential and nonresidential densities; and
- (4) Promote the use of multimodal transportation.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

**CHAPTER 190**

[Substitute Senate Bill 5292]

**MAJOR PUBLIC ENERGY PROJECTS—DEFINITION**

AN ACT Relating to modifying definitions of public energy projects; and amending RCW 80.52.030.

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

**Sec. 1.** RCW 80.52.030 and 1995 c 69 s 2 are each amended to read as follows:

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

(1) "Public agency" means a public utility district, joint operating agency, city, county, or any other state governmental agency, entity, or political subdivision.

(2) "Major public energy project" means a plant or installation capable, or intended to be capable, of generating electricity in an amount greater than ~~((two))~~ three hundred fifty megawatts, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure. Where two or more such plants are located within the same geographic site, each plant shall be considered a major public energy project. An addition to an existing facility is not deemed to be a major energy project unless the addition itself is capable, or intended to be capable, of generating electricity in an amount greater than ~~((two))~~ three hundred fifty megawatts. A project which is under construction on July 1, 1982, shall not be considered a major public energy project unless the official agency budget or estimate for total construction costs for the project as of July 1, 1982, is more than two hundred percent of the first official estimate of total construction costs as specified in the senate energy and utilities committee WPPSS inquiry report, volume one, January 12, 1981, and unless, as of July 1, 1982, the projected remaining cost of construction for that project exceeds two hundred million dollars.

(3) "Cost of construction" means the total cost of planning and building a major public energy project and placing it into operation, including, but not limited to, planning cost, direct construction cost, licensing cost, cost of fuel inventory for

the first year's operation, interest, and all other costs incurred prior to the first day of full operation, whether or not incurred prior to July 1, 1982.

(4) "Cost of acquisition" means the total cost of acquiring a major public energy project from another party, including, but not limited to, principal and interest costs.

(5) "Bond" means a revenue bond, a general obligation bond, or any other indebtedness issued by a public agency or its assignee.

(6) "Applicant" means a public agency, or the assignee of a public agency, requesting the secretary of state to conduct an election pursuant to this chapter.

(7) "Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 191

[House Bill 2669]

### QUALIFIED ALTERNATIVE ENERGY RESOURCE—ANIMAL WASTE

AN ACT Relating to use of animal waste as a qualified alternative energy resource; and amending RCW 19.29A.090.

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

**Sec. 1.** RCW 19.29A.090 and 2001 c 214 s 28 are each amended 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 animal waste or 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 May 8, 2001, 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.

Passed the House February 14, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 192

[Substitute House Bill 2441]

JOINT COMMITTEE ON ENERGY SUPPLY



AN ACT Relating to amending the authority and duties of the joint committee on energy supply; and amending RCW 44.39.070 and 43.21G.040.

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

**Sec. 1.** RCW 44.39.070 and 1977 ex.s. c 328 s 18 are each amended to read as follows:

(1) The committee shall ~~((only))~~ meet and function at the following times: (a) At least once per year or at anytime upon the call of the chair to receive information related to the state or regional energy supply situation; (b) during a condition of energy supply alert or energy emergency; and (c) upon the call of the chair, in response to gubernatorial action to terminate such a condition. Upon the declaration by the governor of a condition of energy supply alert or energy emergency, the committee on energy ~~((and utilities))~~ supply shall meet to receive any plans proposed by the governor for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy supply alert or energy emergency, any proposed plans for the suspension or modification of existing rules of the Washington Administrative Code, and any other relevant matters the governor deems desirable. The committee shall review such plans and matters and shall transmit its recommendations to the governor for review. The committee ~~((shall))~~ may review any voluntary programs or local or regional programs for the production, allocation, or consumption of energy which have been submitted to the committee.

(2) The committee shall receive any request from the governor for the approval of a declaration of a condition of energy emergency as provided in RCW 43.21G.040 as now or hereafter amended and shall either approve or disapprove such request.

(3) During a condition of energy supply alert, the committee shall: (a) Receive any request from the governor for an extension of the condition of energy supply alert for an additional ~~((sixty))~~ period of time not to exceed ninety consecutive days and the findings upon which such request is based; (b) receive any request from the governor for subsequent extensions of the condition of energy supply alert for an additional period of time not to exceed one hundred twenty consecutive days and the findings upon which such a request is based; and ~~((shall))~~ (c) either approve or disapprove ~~((such request))~~ the requested extensions. When approving a request, the committee may specify a longer period than requested, up to ninety days for initial extensions and one hundred twenty days for additional extensions.

(4) During a condition of energy emergency the committee shall: (a) Receive any request from the governor for an extension of the condition of energy emergency for an additional period of time not to exceed forty-five consecutive days and the finding upon which any such request is based; (b) receive any request from the governor for subsequent extensions of the condition of energy emergency for an additional period of time not to exceed sixty consecutive days and the

findings upon which such a request is based; and ((shall)) (c) either approve or disapprove ((such request)) the requested extensions. When approving a request, the committee may specify a longer period than requested, up to forty-five days for initial extensions and sixty days for additional extensions.

Sec. 2: RCW 43.21G.040 and 1987 c 505 s 83 are each amended to read as follows:

(1) The governor may subject to the definitions and limitations provided in this chapter:

(a) Upon finding that an energy supply alert exists within this state or any part thereof, declare a condition of energy supply alert; or

(b) Upon finding that an energy emergency exists within this state or any part thereof, declare a condition of energy emergency. A condition of energy emergency shall terminate thirty consecutive days after the declaration of such condition if the legislature is not in session at the time of such declaration and if the governor fails to convene the legislature pursuant to Article III, section 7 of the Constitution of the state of Washington within thirty consecutive days of such declaration. If the legislature is in session or convened, in accordance with this subsection, the duration of the condition of energy emergency shall be limited in accordance with subsection (3) of this section.

Upon the declaration of a condition of energy supply alert or energy emergency, the governor shall present to the committee any proposed plans for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy emergency, any proposed plans for the suspension or modification of existing rules of the Washington Administrative Code, and any other relevant matters the governor deems desirable. The governor shall review any recommendations of the committee concerning such plans and matters.

Upon the declaration of a condition of energy supply alert or energy emergency, the emergency powers as set forth in this chapter shall become effective only within the area described in the declaration.

(2) A condition of energy supply alert shall terminate ninety consecutive days after the declaration of such condition unless:

(a) Extended by the governor upon issuing a finding that the energy supply alert continues to exist, and with prior approval of such an extension by the committee; or

(b) Extended by the governor based on a declaration by the president of the United States of a national state of emergency in regard to energy supply; or

(c) Upon the request of the governor, extended by declaration of the legislature by concurrent resolution of a continuing energy supply alert.

~~((In the event any such initial extension is implemented, the condition shall terminate one hundred and fifty consecutive days after the declaration of such condition. One or more subsequent extensions may be implemented through the extension procedures set forth in this subsection. In the event any such subsequent~~

~~extension is implemented, the condition shall terminate sixty consecutive days after the implementation of such extension:))~~

An initial extension of an energy supply alert approved and implemented under this subsection shall be for a specified period of time not to exceed ninety consecutive days after the expiration of the original declaration. Any subsequent extensions shall be for a specified period of time not to exceed one hundred twenty consecutive days after the expiration of the previous extension.

(3) A condition of energy emergency shall terminate forty-five consecutive days after the declaration of such condition unless:

(a) Extended by the governor upon issuing a finding that the energy emergency continues to exist, and with prior approval of such an extension by the committee; or

(b) Extended by the governor based on a declaration by the president of the United States of a national state of emergency in regard to energy supply; or

(c) Upon the request of the governor, extended by declaration of the legislature by concurrent resolution of a continuing energy emergency.

~~((In the event any such initial extension is implemented, the condition shall terminate ninety consecutive days after the declaration of such condition. One or more subsequent extensions may be implemented through the extension procedures set forth in this subsection. In the event any such subsequent extension is implemented, the condition shall terminate forty-five consecutive days after the implementation of such extension:))~~

An initial extension of an energy emergency approved and implemented under this subsection shall be for a specified period of time not to exceed forty-five consecutive days after the expiration of the original declaration. Any subsequent extensions shall be for a specified period of time not to exceed sixty consecutive days after the expiration of the previous extension.

(4) A condition of energy supply alert or energy emergency shall cease to exist upon a declaration to that effect by either of the following: (a) The governor; or (b) the legislature, by concurrent resolution, if in regular or special session: PROVIDED, That the governor shall terminate a condition of energy supply alert or energy emergency when the energy supply situation upon which the declaration of a condition of energy supply alert or energy emergency was based no longer exists.

(5) In a condition of energy supply alert, the governor may, as deemed necessary to preserve and protect the public health, safety, and general welfare, and to minimize, to the fullest extent possible, the injurious economic, social, and environmental consequences of such energy supply alert, issue orders to: (a) Suspend or modify existing rules of the Washington Administrative Code of any state agency relating to the consumption of energy by such agency or to the production of energy, and (b) direct any state or local governmental agency to implement programs relating to the consumption of energy by the agency which

have been developed by the governor or the agency and reviewed by the committee.

(6) In addition to the powers in subsection (5) of this section, in a condition of energy emergency, the governor may, as deemed necessary to preserve and protect the public health, safety, and general welfare, and to minimize, to the fullest extent possible, the injurious economic, social, and environmental consequences of such an emergency, issue orders to: (a) Implement programs, controls, standards, and priorities for the production, allocation, and consumption of energy; (b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and (c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states and localities.

(7) The governor shall make a reasonable, good faith effort to provide the committee with notice when the governor is considering declaring a condition of energy supply alert or energy emergency. The governor shall immediately transmit the declaration of a condition of energy supply alert or energy emergency and the findings upon which the declaration is based and any orders issued under the powers granted in this chapter to the committee. The governor shall provide the committee with at least fourteen days' notice when requesting an extension of a condition of energy supply alert or energy emergency, unless such notice is waived by the committee.

(8) Nothing in this chapter shall be construed to mean that any program, control, standard, priority or other policy created under the authority of the emergency powers authorized by this chapter shall have any continuing legal effect after the cessation of the condition of energy supply alert or energy emergency.

(9) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, including, but not limited to, chapter 34.05 RCW, this chapter shall govern and control, and such other law or rule (~~or regulation promulgated~~) issued thereunder shall be deemed superseded for the purposes of this chapter.

(10) Because of the emergency nature of this chapter, all actions authorized or required hereunder, or taken pursuant to any order issued by the governor, shall be exempted from any and all requirements and provisions of the state environmental policy act of 1971, chapter 43.21C RCW, including, but not limited to, the requirement for environmental impact statements.

(11) Except as provided in this section nothing in this chapter shall exempt a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 193

[House Bill 2284]

### COMMERCIAL MOTOR VEHICLES—DRIVER DISQUALIFICATION—RAILROAD CROSSINGS

AN ACT Relating to the disqualification of drivers of commercial motor vehicles; and amending RCW 46.25.090.

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

**Sec. 1.** RCW 46.25.090 and 1996 c 30 s 3 are each amended to read as follows:

(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a commercial motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony;

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle.

If any of the violations set forth in this subsection occurred while transporting a hazardous material required to be identified by a placard, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after October 1, 1989, may be considered in applying this subsection.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by

chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of or found to have committed two serious traffic violations, or one hundred twenty days if convicted of or found to have committed three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order;

(b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (46 U.S.C. Sec. 1801-1813), or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(8) Within ten days after suspending, revoking, or canceling a commercial driver's license, the department shall update its records to reflect that action. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the department shall notify the licensing authority of the state that issued the commercial driver's license.

Passed the House February 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 194

[House Bill 2345]

### MOTOR VEHICLE ACCIDENTS—DRIVER DUTIES

AN ACT Relating to the duty of a driver in an accident; 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 2001 c 145 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)(a) 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~~) must move the vehicle as soon as possible off the roadway or freeway main lanes,

shoulders, medians, and adjacent areas to a location on an exit ramp shoulder, the frontage road, the nearest suitable cross street, or other suitable location. The driver shall remain at(:(;) the ((scene of such accident)) suitable location 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)). Moving the vehicle in no way affects fault for an accident.

(b) A law enforcement officer or representative of the department of transportation may cause a motor vehicle, cargo, or debris to be moved from the roadway; and neither the department of transportation representative, nor anyone acting under the direction of the officer or the department of transportation representative is liable for damage to the motor vehicle, cargo, or debris caused by reasonable efforts of removal.

(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 February 16, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 195

[Engrossed Substitute House Bill 2560]

### DRIVER TRAINING SCHOOLS

AN ACT Relating to driver training schools; amending RCW 46.20.100, 46.20.055, 46.20.070, and 46.82.300; and adding a new section to chapter 46.82 RCW.

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

**Sec. 1.** RCW 46.20.100 and 1999 c 274 s 14 are each amended to read as follows:

(1) **Application.** The application of a person under the age of eighteen years for a driver's license or a motorcycle endorsement must be signed by a parent or guardian with custody of the minor. If the person under the age of eighteen has no father, mother, or guardian, then the application must be signed by the minor's employer.

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

(a) To meet the traffic safety education requirement for a driver's license the applicant must satisfactorily complete a traffic safety education course as defined in RCW 28A.220.020 for a course offered by a school district, or as defined by the department of licensing for a course offered by a driver training school licensed under chapter 46.82 RCW. The course offered by a school district or an approved

private school must meet the standards established by the office of the state superintendent of public instruction. The course offered by a driver training school must meet the standards established by the department of licensing with the advice of the driver instructors' advisory committee, pursuant to RCW 46.82.300. The traffic safety education course may be provided by:

(i) A recognized secondary school; or

(ii) A (~~commercial driving enterprise~~) driver training school licensed under chapter 46.82 RCW that is annually approved by the (~~office of the superintendent of public instruction~~) department of licensing.

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

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

(i) He or she was unable to take or complete a traffic safety education course;

(ii) A need exists for the applicant to operate a motor vehicle; and

(iii) He or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property.

The department may adopt rules to implement this subsection (2)(c) in concert with the supervisor of the traffic safety education section of the office of the superintendent of public instruction.

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

**Sec. 2.** RCW 46.20.055 and 1999 c 274 s 13 are each amended to read as follows:

(1) **Driver's instruction permit.** The department may issue a driver's instruction permit with a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid a five-dollar fee, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driving training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

(2) **Nonphoto permit fee.** An applicant who meets the requirements of subsection (1) of this section other than payment of the five-dollar fee may obtain a driver's instruction permit without a photograph by paying a fee of four dollars.

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

- (a) A traffic safety education course as defined by RCW 28A.220.020(2); or
- (b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(1).

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

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

- (a) The person has immediate possession of the permit; and
- (b) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

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

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

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

**Sec. 3.** RCW 46.20.070 and 1999 c 6 s 13 are each amended to read as follows:

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

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

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

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

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

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

The permit must contain a photograph of the person.

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

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

(ii) Participate in the classroom portion of a traffic safety education course authorized under RCW 28A.220.030 or the classroom portion of a traffic safety education course offered by a driver training school licensed and inspected by the

department of licensing under chapter 46.82 RCW offered in the community where the holder resides.

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

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

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

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

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

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

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

**NEW SECTION. Sec. 4.** A new section is added to chapter 46.82 RCW to read as follows:

(1) Persons instructing students under eighteen years of age are required to have a background check through the Washington state patrol criminal identification system and through the federal bureau of investigation. The background check shall also include a fingerprint check using a fingerprint card.

(2) The cost of the background check shall be paid by the instructor.

(3) The department may waive the background check for any applicant who has had a background check within two years before applying to become an instructor.

**Sec. 5.** RCW 46.82.300 and 1984 c 287 s 93 are each amended to read as follows:

(1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of five members. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of a representative of the driver training schools, a representative of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from the Washington state traffic safety commission. Members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. A member who is receiving a salary from the state shall not receive compensation other than travel expenses incurred in such service.

(2) The advisory committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The director or the director's

representative shall attend all meetings of the advisory committee and shall serve as chairman.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

(b) Review violations of this chapter and to recommend to the director appropriate enforcement or disciplinary action as provided in this chapter;

(c) Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education; (~~and~~)

(d) Review and update instructor certification standards to be consistent with RCW 46.82.330 and take into consideration those standards required to be met by traffic safety education teachers under RCW 28A.220.020(3); and

(e) Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards.

Passed the House March 13, 2002.

Passed the Senate March 12, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 196

[Senate Bill 5735]

### MOTORCYCLE TAILLIGHTS

AN ACT Relating to motorcycle taillights; and amending RCW 46.37.100.

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

**Sec. 1.** RCW 46.37.100 and 1992 c 46 s 1 are each amended to read as follows:

(1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop lamp or other signal device, which may be red, amber, or yellow, and except that on any vehicle forty or more years old, or on any motorcycle regardless of age, the taillight may also contain a blue or purple insert of not more than one inch in diameter, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber.

Passed the Senate February 1, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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**CHAPTER 197**

[Substitute Senate Bill 6282]

**MOTORCYCLE SKILLS EDUCATION**

AN ACT Relating to motorcycle skills education; and amending RCW 46.20.515 and 46.81A.020.

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

**Sec. 1.** RCW 46.20.515 and 2001 c 104 s 2 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 or who satisfactorily complete a private motorcycle skills education course that has been certified by the department under RCW 46.81A.020.

**Sec. 2.** RCW 46.81A.020 and 1998 c 245 s 91 are each amended to read as follows:

(1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute a motorcycle skills education course for both novice and advanced motorcycle riders that is a minimum of eight hours and no more than sixteen hours at a cost of (i) no more than fifty dollars for Washington state residents under the age of eighteen, and (ii) no more than one hundred dollars for Washington state residents who are eighteen years of age or older and military personnel of any age stationed in Washington state;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors to conduct at least three classes in a one-year period to maintain their teaching eligibility;

(d) Encourage the use of radio or intercom equipped helmets when, in the opinion of the instructor, radio or intercom equipped helmets improve the quality of instruction.

(4) The department may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent

to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program, and that the costs of the review, certification, and audit process will be borne by the party seeking certification.

(5) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved or certified motorcycle skills education course.

Passed the Senate February 13, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 198

[Substitute House Bill 2347]

### UNIFORM INTERSTATE FAMILY SUPPORT ACT

AN ACT Relating to the uniform interstate family support act; adding new sections to chapter 26.21 RCW; repealing RCW 26.21.005, 26.21.015, 26.21.025, 26.21.075, 26.21.085, 26.21.095, 26.21.105, 26.21.115, 26.21.127, 26.21.135, 26.21.145, 26.21.155, 26.21.205, 26.21.215, 26.21.225, 26.21.235, 26.21.245, 26.21.255, 26.21.265, 26.21.275, 26.21.285, 26.21.295, 26.21.305, 26.21.315, 26.21.325, 26.21.335, 26.21.345, 26.21.355, 26.21.365, 26.21.375, 26.21.385, 26.21.420, 26.21.450, 26.21.452, 26.21.453, 26.21.455, 26.21.456, 26.21.458, 26.21.460, 26.21.480, 26.21.490, 26.21.500, 26.21.510, 26.21.520, 26.21.530, 26.21.540, 26.21.550, 26.21.560, 26.21.570, 26.21.580, 26.21.590, 26.21.595, 26.21.600, 26.21.620, 26.21.640, 26.21.650, 26.21.912, 26.21.913, 26.21.914, 26.21.915, and 26.21.916; and providing a contingent effective date.

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 interstate family support act.

NEW SECTION. Sec. 102. DEFINITIONS. In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of

them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by RCW 50.04.080, to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules having the force of law.

(12) "Obligee" means:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(c) An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent:

(a) Who owes or is alleged to owe a duty of support;

(b) Who is alleged but has not been adjudicated to be a parent of a child; or

(c) Who is liable under a support order.

(14) "Person" means: An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(15) "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.

(16) "Register" means to record or file a support order or judgment determining parentage in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(17) "Registering tribunal" means a tribunal in which a support order is registered.



(18) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "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. The term includes:

(a) An Indian tribe; and

(b) A foreign country or political subdivision that:

(i) Has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) Has established a reciprocal arrangement for child support with this state as provided in section 308 of this act; or

(iii) Has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

(22) "Support enforcement agency" means a public official or agency authorized to seek:

(a) Enforcement of support orders or laws relating to the duty of support;

(b) Establishment or modification of child support;

(c) Determination of parentage;

(d) Location of obligors or their assets; or

(e) Determination of the controlling child support order.

(23) "Support order" means a judgment, decree, order, or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

**NEW SECTION. Sec. 103. TRIBUNAL OF THIS STATE.** The superior court is the state tribunal for judicial proceedings and the department of social and health services division of child support is the state tribunal for administrative proceedings.

**NEW SECTION. Sec. 104. REMEDIES CUMULATIVE.** (1) Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(2) This chapter does not:

- (a) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or
- (b) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

**ARTICLE 2  
JURISDICTION  
PART 1**

**EXTENDED PERSONAL JURISDICTION**

**NEW SECTION. Sec. 201. BASES FOR JURISDICTION OVER NONRESIDENT.** (1) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (a) The individual is personally served with a citation, summons, or notice within this state;
- (b) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (c) The individual resided with the child in this state;
- (d) The individual resided in this state and provided prenatal expenses or support for the child;
- (e) The child resides in this state as a result of the acts or directives of the individual;
- (f) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (g) The individual asserted parentage in the putative father registry maintained in this state by the state registrar of vital statistics; or
- (h) There is any other basis consistent with the Constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) The bases of personal jurisdiction set forth in subsection (1) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of section 611 or 615 of this act are met.

(3) Personal jurisdiction acquired under subsection (1) of this section continues so long as the tribunal of this state that acquired personal jurisdiction has continuing, exclusive jurisdiction to enforce or modify its order.

**NEW SECTION. Sec. 202. PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT.** A tribunal of this state exercising personal jurisdiction over a nonresident under section 201 of this act or recognizing a support order of a foreign country or political subdivision on the basis of comity, may receive evidence from another state, pursuant to section 316 of this act, communicate with a tribunal of another state pursuant to section 317 of this act, and obtain discovery through a tribunal of another state pursuant to section 318 of

this act. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this state.

## PART 2

### PROCEEDINGS INVOLVING TWO OR MORE STATES

**NEW SECTION. Sec. 203. INITIATING AND RESPONDING TRIBUNAL OF THIS STATE.** Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

**NEW SECTION. Sec. 204. SIMULTANEOUS PROCEEDINGS.** (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(a) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) If relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(a) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) The contesting party timely challenges the exercise of jurisdiction in this state; and

(c) If relevant, the other state is the home state of the child.

**NEW SECTION. Sec. 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD SUPPORT ORDER.** (1) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(a) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(2) A tribunal of this state that has issued a child support order consistent with the law of this state shall not exercise continuing, exclusive jurisdiction to modify the order if:

(a) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(b) Its order is not the controlling order.

(3) If a tribunal of another state has issued a child support order pursuant to the uniform interstate family support act or a law substantially similar to that act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(4) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

**NEW SECTION. Sec. 206. CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER.** (1) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(a) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the uniform interstate family support act; or

(b) A money judgment for arrears of support and interest on the order accrued before a determination that an order of other state is the controlling order.

(2) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

### **PART 3**

### **RECONCILIATION OF TWO OR MORE ORDERS**

**NEW SECTION. Sec. 207. DETERMINATION OF CONTROLLING CHILD SUPPORT ORDER.** (1) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(2) If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

(a) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(b) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home

state of the child controls. However, if an order has not been issued in the current home state of the child, the order most recently issued controls.

(c) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state shall issue a child support order, which controls.

(3) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (2) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6 of this chapter, or may be filed as a separate proceeding.

(4) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(5) The tribunal that issued the controlling order under subsection (1), (2), or (3) of this section has continuing jurisdiction to the extent provided in section 205 or 206 of this act.

(6) A tribunal of this state that determines by order which is the controlling order under subsection (2)(a) or (b) or (3) of this section or that issues a new controlling order under subsection (2)(c) of this section shall state in that order:

(a) The basis upon which the tribunal made its determination;

(b) The amount of prospective support, if any; and

(c) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 209 of this act.

(7) Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(8) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

**NEW SECTION. Sec. 208. CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEES.** In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

**NEW SECTION. Sec. 209. CREDIT FOR PAYMENTS.** A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state.

**NEW SECTION. Sec. 210. CONTINUING, EXCLUSIVE JURISDICTION OVER NONRESIDENT PARTY.** If a party to a proceeding subject to the continuing, exclusive jurisdiction of a tribunal of this state no longer resides in the issuing state, in subsequent proceedings the tribunal may receive evidence from another state pursuant to section 316 of this act, to communicate with a tribunal of another state pursuant to section 317 of this act, and obtain discovery through a tribunal of another state pursuant to section 318 of this act. In all other respects, Articles 3 through 7 of this chapter do not apply and the tribunal shall apply the procedural and substantive law of this state.

**NEW SECTION. Sec. 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL SUPPORT ORDER.** (1) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(2) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(3) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

- (a) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or
- (b) A responding tribunal to enforce or modify its own spousal support order.

### ARTICLE 3

#### CIVIL PROVISIONS OF GENERAL APPLICATION

**NEW SECTION. Sec. 301. PROCEEDINGS UNDER THIS CHAPTER.** (1) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(2) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

**NEW SECTION. Sec. 302. PROCEEDING BY MINOR PARENT.** A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

**NEW SECTION. Sec. 303. APPLICATION OF LAW OF THIS STATE.**

Except as otherwise provided by this chapter, a responding tribunal of this state shall:

- (1) Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
- (2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

**NEW SECTION. Sec. 304. DUTIES OF INITIATING TRIBUNAL.** (1)

Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward the petition and its accompanying documents:

- (a) To the responding tribunal or appropriate support enforcement agency in the responding state; or
- (b) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, upon request the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official exchange rates as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state.

**NEW SECTION. Sec. 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.** (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 301(2) of this act, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

- (a) Issue or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage;
- (b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (c) Order income withholding;
- (d) Determine the amount of any arrearages, and specify a method of payment;
- (e) Enforce orders by civil or criminal contempt, or both;
- (f) Set aside property for satisfaction of the support order;
- (g) Place liens and order execution on the obligor's property;
- (h) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) Issue a bench warrant or writ of arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant or writ of arrest in any local and state computer systems for criminal warrants;

(j) Order the obligor to seek appropriate employment by specified methods;

(k) Award reasonable attorneys' fees and other fees and costs; and

(l) Grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(6) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under applicable official exchange rates as publicly reported.

**NEW SECTION. Sec. 306. INAPPROPRIATE TRIBUNAL.** If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

**NEW SECTION. Sec. 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.** (1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(2) A support enforcement agency of this state that is providing services to the petitioner shall:

(a) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) Request an appropriate tribunal to set a date, time, and place for a hearing;

(c) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(e) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(f) Notify the petitioner if jurisdiction over the respondent cannot be obtained.



(3) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(a) To ensure that the order to be registered is the controlling order; or

(b) If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(4) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under applicable official exchange rates as publicly reported.

(5) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 319 of this chapter.

(6) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

**NEW SECTION. Sec. 308. DUTY OF STATE OFFICIAL OR AGENCY.**

(1) If the appropriate state official or agency determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the state official or agency may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

(2) The appropriate state official or agency may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

**NEW SECTION. Sec. 309. PRIVATE COUNSEL.** An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

**NEW SECTION. Sec. 310. DUTIES OF STATE INFORMATION AGENCY.** (1) The Washington state support registry under chapter 26.23 RCW is the state information agency under this chapter.

(2) The state information agency shall:

(a) Compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(c) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(d) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

**NEW SECTION. Sec. 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.** (1) In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage, or to register and modify a support order of another state must file a petition. Unless otherwise ordered under section 312 of this act, 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 or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. 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.

**NEW SECTION. Sec. 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES.** 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 specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

**NEW SECTION. Sec. 313. COSTS AND FEES.** (1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 of this chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

**NEW SECTION. Sec. 314. LIMITED IMMUNITY OF PETITIONER.** (1) Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while physically present in this state to participate in the proceeding.

**NEW SECTION. Sec. 315. NONPARENTAGE AS DEFENSE.** A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

**NEW SECTION. Sec. 316. SPECIAL RULES OF EVIDENCE AND PROCEDURES.** (1) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(2) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, that would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing in another state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

(10) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

**NEW SECTION. Sec. 317. COMMUNICATIONS BETWEEN TRIBUNALS.** A tribunal of this state may communicate with a tribunal of another state or foreign country or political subdivision in a record, or by telephone or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state or foreign country or political subdivision. A tribunal of this state may furnish similar information by similar means to a tribunal of another state or foreign country or political subdivision.

**NEW SECTION. Sec. 318. ASSISTANCE WITH DISCOVERY.** A tribunal of this state may:

(1) Request a tribunal of another state to assist in obtaining discovery; and

(2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

**NEW SECTION. Sec. 319. RECEIPT AND DISBURSEMENT OF PAYMENTS.** (1) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

(2) If the obligor, the obligee who is an individual, or the child does not reside in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(a) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(b) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(3) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (2) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

#### **ARTICLE 4 ESTABLISHMENT OF SUPPORT ORDER**

**NEW SECTION. Sec. 401. PETITION TO ESTABLISH SUPPORT ORDER.** (1) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

(a) The individual seeking the order resides in another state; or

(b) The support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(a) A presumed father of the child;

(b) Petitioning to have his paternity adjudicated;

(c) Identified as the father of the child through genetic testing;

(d) An alleged father who has declined to submit to genetic testing;

(e) Shown by clear and convincing evidence to be the father of the child;

(f) An acknowledged father as provided by applicable state law;

(g) The mother of the child; or

(h) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 305 of this act.

**ARTICLE 5**  
**ENFORCEMENT OF ORDER OF**  
**ANOTHER STATE WITHOUT REGISTRATION**

NEW SECTION. **Sec. 501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE.** An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer under RCW 50.04.080 without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

NEW SECTION. **Sec. 502. EMPLOYER'S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER STATE.** (1) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(2) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state.

(3) Except as provided in subsection (4) of this section and section 503 of this act, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(a) The duration and amount of periodic payments of current child support, stated as a sum certain;

(b) The person designated to receive payments and the address to which the payments are to be forwarded;

(c) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) The employer's fee for processing an income-withholding order;

(b) The maximum amount permitted to be withheld from the obligor's income; and

(c) The times within which the employer must implement the withholding order and forward the child support payment.

NEW SECTION. **Sec. 503. EMPLOYER'S COMPLIANCE WITH TWO OR MORE INCOME-WITHHOLDING ORDERS.** If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer

complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

**NEW SECTION. Sec. 504. IMMUNITY FROM CIVIL LIABILITY.** An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

**NEW SECTION. Sec. 505. PENALTIES FOR NONCOMPLIANCE.** An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

**NEW SECTION. Sec. 506. CONTEST BY OBLIGOR.** (1) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Article 6 of this chapter, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state. Section 604 of this act applies to the contest.

(2) The obligor shall give notice of the contest to:

- (a) A support enforcement agency providing services to the obligee;
- (b) Each employer that has directly received an income-withholding order relating to the obligor; and
- (c) The person designated to receive payments in the income-withholding order or, if no person or agency is designated, to the obligee.

**NEW SECTION. Sec. 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.** (1) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

**ARTICLE 6  
REGISTRATION, ENFORCEMENT, AND  
MODIFICATION OF SUPPORT ORDER**

**PART 1**

**REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER**

NEW SECTION. **Sec. 601.** REGISTRATION OF ORDER FOR ENFORCEMENT. A support order or income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

NEW SECTION. **Sec. 602.** PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT. (1) A support order or income-withholding order of another state may be registered in this state by sending the following records and information to the appropriate tribunal in this state:

- (a) A letter of transmittal to the tribunal requesting registration and enforcement;
- (b) Two copies, including one certified copy, of the order to be registered, including any modification of the order;
- (c) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (d) The name of the obligor and, if known:
  - (i) The obligor's address and social security number;
  - (ii) The name and address of the obligor's employer and any other source of income of the obligor; and
  - (iii) A description and the location of property of the obligor in this state not exempt from execution; and
- (e) Except as otherwise provided in section 312 of this act, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

- (4) If two or more orders are in effect, the person requesting registration shall:
- (a) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;
  - (b) Specify the order alleged to be the controlling order, if any; and
  - (c) Specify the amount of consolidated arrears, if any.

(5) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.



**NEW SECTION. Sec. 603. EFFECT OF REGISTRATION FOR ENFORCEMENT.** (1) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

**NEW SECTION. Sec. 604. CHOICE OF LAW.** (1) Except as otherwise provided in subsection (4) of this section, the law of the issuing state governs:

(a) The nature, extent, amount, and duration of current payments under a registered support order;

(b) The computation and payment of arrearages and accrual of interest on the arrearages under the registered support order; and

(c) The existence and satisfaction of other obligations under the registered support order.

(2) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.

(3) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.

(4) After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state issuing the registered controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

## **PART 2 CONTEST OF VALIDITY OR ENFORCEMENT**

**NEW SECTION. Sec. 605. NOTICE OF REGISTRATION OF ORDER.**

(1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) A notice must inform the nonregistering party:

(a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice;

(c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(d) Of the amount of any alleged arrearages.

(3) If the registering party asserts that two or more orders are in effect, a notice must also:

(a) Identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(b) Notify the nonregistering party of the right to a determination of which is the controlling order;

(c) State that the procedures provided in subsection (2) of this section apply to the determination of which is the controlling order; and

(d) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(4) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state.

**NEW SECTION. Sec. 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER.** (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 607 of this act.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

**NEW SECTION. Sec. 607. CONTEST OF REGISTRATION OR ENFORCEMENT.** (1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) The issuing tribunal lacked personal jurisdiction over the contesting party;

(b) The order was obtained by fraud;

(c) The order has been vacated, suspended, or modified by a later order;

(d) The issuing tribunal has stayed the order pending appeal;

(e) There is a defense under the law of this state to the remedy sought;

(f) Full or partial payment has been made;

(g) The statute of limitation under section 604 of this act precludes enforcement of some or all of the alleged arrearages; or

(h) The alleged controlling order is not the controlling order.

(2) If a party presents evidence establishing a full or partial defense under subsection (1) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

**NEW SECTION. Sec. 608. CONFIRMED ORDER.** Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

### **PART 3 REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER**

**NEW SECTION. Sec. 609. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION.** A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Part 1 of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

**NEW SECTION. Sec. 610. EFFECT OF REGISTRATION FOR MODIFICATION.** A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 611 of this act have been met.

**NEW SECTION. Sec. 611. MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE.** (1) If section 613 of this act does not apply, except as otherwise provided in section 615 of this act, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing the tribunal finds that:

(a) The following requirements are met:

(i) The child, the obligee who is an individual, and the obligor do not reside in the issuing state;

(ii) A petitioner who is a nonresident of this state seeks modification; and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) This state is either the state of residence of the child or of a party who is an individual subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) Except as otherwise provided in section 615 of this act, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under section 207 of this act establishes the aspects of the support order that are nonmodifiable.

(4) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(5) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

**NEW SECTION. Sec. 612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.** If a child support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction pursuant to the uniform interstate family support act, a tribunal of this state:

(1) May enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) May provide other appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

**NEW SECTION. Sec. 613. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.** (1) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(2) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 of this chapter, this article, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 of this chapter do not apply.

**NEW SECTION. Sec. 614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.** Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

**NEW SECTION. Sec. 615. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION.** (1) If a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to section 611 of this act has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

(2) An order issued pursuant to this section is the controlling order.

#### ARTICLE 7

#### DETERMINATION OF PARENTAGE

**NEW SECTION. Sec. 701. PROCEEDING TO DETERMINE PARENTAGE.** (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the uniform parentage act and the procedural and substantive law of this state.

#### ARTICLE 8

#### INTERSTATE RENDITION

**NEW SECTION. Sec. 801. GROUNDS FOR RENDITION.** (1) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from the demanding state.

**NEW SECTION. Sec. 802. CONDITIONS OF RENDITION.** (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 901.** The following acts or parts of acts are each repealed:

- (1) RCW 26.21.005 (Definitions) and 1997 c 58 s 911 & 1993 c 318 s 101;
- (2) RCW 26.21.015 (Tribunal of this state) and 1993 c 318 s 102;
- (3) RCW 26.21.025 (Remedies cumulative) and 1993 c 318 s 103;
- (4) RCW 26.21.075 (Bases for jurisdiction over nonresident) and 1993 c 318 s 201;
- (5) RCW 26.21.085 (Procedure when exercising jurisdiction over nonresident) and 1993 c 318 s 202;
- (6) RCW 26.21.095 (Initiating and responding tribunal of this state) and 1993 c 318 s 203;
- (7) RCW 26.21.105 (Simultaneous proceedings in another state) and 1993 c 318 s 204;
- (8) RCW 26.21.115 (Continuing, exclusive jurisdiction) and 1997 c 58 s 912 & 1993 c 318 s 205;
- (9) RCW 26.21.127 (Enforcement and modification of support order by tribunal having continuing jurisdiction) and 1993 c 318 s 206;

- (10) RCW 26.21.135 (Recognition of child support orders—Controlling order—Filing certified copy of order) and 1997 c 58 s 913 & 1993 c 318 s 207;
- (11) RCW 26.21.145 (Multiple child support orders for two or more obligees) and 1993 c 318 s 208;
- (12) RCW 26.21.155 (Credit for payments) and 1993 c 318 s 209;
- (13) RCW 26.21.205 (Proceedings under this chapter) and 1993 c 318 s 301;
- (14) RCW 26.21.215 (Action by minor parent) and 1993 c 318 s 302;
- (15) RCW 26.21.225 (Application of law of this state) and 1993 c 318 s 303;
- (16) RCW 26.21.235 (Duties of initiating tribunal) and 1997 c 58 s 914 & 1993 c 318 s 304;
- (17) RCW 26.21.245 (Duties and powers of responding tribunal) and 1997 c 58 s 915 & 1993 c 318 s 305;
- (18) RCW 26.21.255 (Inappropriate tribunal) and 1997 c 58 s 916 & 1993 c 318 s 306;
- (19) RCW 26.21.265 (Duties of support enforcement agency) and 1997 c 58 s 917 & 1993 c 318 s 307;
- (20) RCW 26.21.275 (Duty of attorney general) and 1993 c 318 s 308;
- (21) RCW 26.21.285 (Private counsel) and 1993 c 318 s 309;
- (22) RCW 26.21.295 (Duties of department as state information agency) and 1993 c 318 s 310;
- (23) RCW 26.21.305 (Pleadings and accompanying documents) and 2001 c 42 s 2 & 1993 c 318 s 311;
- (24) RCW 26.21.315 (Nondisclosure of information—Circumstances) and 1993 c 318 s 312;
- (25) RCW 26.21.325 (Costs—Fees) and 1993 c 318 s 313;
- (26) RCW 26.21.335 (Limited immunity of petitioner) and 1993 c 318 s 314;
- (27) RCW 26.21.345 (Nonparentage as defense) and 1993 c 318 s 315;
- (28) RCW 26.21.355 (Special rules of evidence and procedure) and 1993 c 318 s 316;
- (29) RCW 26.21.365 (Communications between tribunals) and 1993 c 318 s 317;
- (30) RCW 26.21.375 (Assistance with discovery) and 1993 c 318 s 318;
- (31) RCW 26.21.385 (Receipt and disbursement of payments) and 1993 c 318 s 319;
- (32) RCW 26.21.420 (Petition to establish support order—Notice—Hearing—Orders) and 1993 c 318 s 401;
- (33) RCW 26.21.450 (Recognition of income-withholding order of another state) and 1997 c 58 s 918 & 1993 c 318 s 501;
- (34) RCW 26.21.452 (Employer's compliance with income-withholding order of another state) and 1997 c 58 s 919;
- (35) RCW 26.21.453 (Compliance with multiple income-withholding orders) and 1997 c 58 s 920;
- (36) RCW 26.21.455 (Immunity from civil liability) and 1997 c 58 s 921;

- (37) RCW 26.21.456 (Penalties for noncompliance) and 1997 c 58 s 922;
- (38) RCW 26.21.458 (Contest by obligor) and 1997 c 58 s 923;
- (39) RCW 26.21.460 (Administrative enforcement of orders) and 1993 c 318 s 502;
- (40) RCW 26.21.480 (Registration of order for enforcement) and 1993 c 318 s 601;
- (41) RCW 26.21.490 (Procedure to register order for enforcement) and 1997 c 58 s 924 & 1993 c 318 s 602;
- (42) RCW 26.21.500 (Effect of registration for enforcement) and 1993 c 318 s 603;
- (43) RCW 26.21.510 (Choice of law—Statute of limitations for arrearages) and 1993 c 318 s 604;
- (44) RCW 26.21.520 (Notice of registration of order) and 1997 c 58 s 925 & 1993 c 318 s 605;
- (45) RCW 26.21.530 (Procedure to contest validity or enforcement of registered order) and 1997 c 58 s 926 & 1993 c 318 s 606;
- (46) RCW 26.21.540 (Contest of registration or enforcement) and 1993 c 318 s 607;
- (47) RCW 26.21.550 (Confirmed order) and 1993 c 318 s 608;
- (48) RCW 26.21.560 (Procedure to register child support order of another state for modification) and 1993 c 318 s 609;
- (49) RCW 26.21.570 (Effect of registration for modification—Authority to enforce registered order) and 1993 c 318 s 610;
- (50) RCW 26.21.580 (Modification of child support order of another state) and 1997 c 58 s 927 & 1993 c 318 s 611;
- (51) RCW 26.21.590 (Recognition of order modified in another state—Enforcement) and 1997 c 58 s 928 & 1993 c 318 s 612;
- (52) RCW 26.21.595 (Jurisdiction to modify child support order of another state if individual parties reside in this state—Application of chapter) and 1997 c 58 s 929;
- (53) RCW 26.21.600 (Notice to issuing tribunal of modification) and 1997 c 58 s 930;
- (54) RCW 26.21.620 (Proceeding to determine parentage) and 1997 c 58 s 931 & 1993 c 318 s 701;
- (55) RCW 26.21.640 (Grounds for rendition) and 1993 c 318 s 801;
- (56) RCW 26.21.650 (Surrender of individual charged criminally with failure to support an obligee—Conditions of rendition) and 1993 c 318 s 802;
- (57) RCW 26.21.912 (Uniformity of application and construction) and 1993 c 318 s 901;
- (58) RCW 26.21.913 (Short title) and 1993 c 318 s 902;
- (59) RCW 26.21.914 (Severability—1993 c 318) and 1993 c 318 s 903;
- (60) RCW 26.21.915 (Captions, part headings, articles not law—1993 c 318) and 1993 c 318 s 906; and



(61) RCW 26.21.916 (Effective date—1993 c 318) and 1993 c 318 s 907.

NEW SECTION. **Sec. 902.** Captions, part headings, and articles used in this act are not any part of the law.

NEW SECTION. **Sec. 903. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. **Sec. 904. 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. 905.** Sections 101 through 802 and 902 through 904 of this act are each added to chapter 26.21 RCW.

NEW SECTION. **Sec. 906.** This act takes effect six months after the amendment by congress to 42 U.S.C. Sec. 666(f) authorizing or mandating states to adopt this version of the uniform interstate family support act.

Passed the House February 18, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 199

[Substitute Senate Bill 5369]

### CHILD SUPPORT MATTERS

AN ACT Relating to jurisdiction in child support matters; amending RCW 26.09.170, 26.09.175, 26.23.130, 74.20.065, 74.20A.055, 74.20A.056, and 74.20A.080; and repealing RCW 74.20A.058.

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

**Sec. 1.** RCW 26.09.170 and 1997 c 58 s 910 are each amended to read as follows:

(1) Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in subsections (~~((4), (5), (8), and (9))~~) (5), (6), (9), and (10) of this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, the support provisions of the order are terminated upon the marriage to each other of parties to a paternity order, or upon remarriage to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(5) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

~~((5))~~ (6) An order or decree entered prior to June 7, 1984, may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require health insurance coverage for a child named therein; or

(b) Modify an existing order for health insurance coverage.

~~((6))~~ (7) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

~~((7))~~ (8) The department of social and health services may file an action to modify an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is twenty-five percent or more below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order. The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

~~((8))~~ (9)(a) All child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets.

(b) A party may petition for modification in cases of substantially changed circumstances under subsection (1) of this section at any time. However, if relief is granted under subsection (1) of this section, twenty-four months must pass before a motion for an adjustment under (a) of this subsection may be filed.

(c) If, pursuant to (a) of this subsection or subsection (~~((9))~~) (10) of this section, the court adjusts or modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for an adjustment under (a) of this subsection may be filed.

(d) A parent who is receiving transfer payments who receives a wage or salary increase may not bring a modification action pursuant to subsection (1) of this section alleging that increase constitutes a substantial change of circumstances.

(e) The department of social and health services may file an action at any time to modify an order of child support in cases of substantially changed circumstances if public assistance money is being paid to or for the benefit of the child. The determination of the existence of substantially changed circumstances by the department that lead to the filing of an action to modify the order of child support is not binding upon the court.

~~((9))~~ (10) An order of child support may be adjusted twenty-four months from the date of the entry of the decree or the last adjustment or modification, whichever is later, based upon changes in the economic table or standards in chapter 26.19 RCW.

**Sec. 2.** RCW 26.09.175 and 1992 c 229 s 3 are each amended to read as follows:

(1) A proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets. The petition shall be in the form prescribed by the administrator for the courts. There shall be a fee of twenty dollars for the filing of a petition for modification of dissolution.

(2) The petitioner shall serve upon the other party the summons, a copy of the petition, and the worksheets in the form prescribed by the administrator for the courts. If the modification proceeding is the first action filed in this state, service shall be made by personal service. If the decree to be modified was entered in this state, service shall be by personal service or by any form of mail requiring a return receipt. If the support obligation has been assigned to the state pursuant to RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030, the summons, petition, and worksheets shall also be served on the attorney general; except that notice shall be given to the office of the prosecuting attorney for the county in which the action is filed in lieu of the office of the attorney general in those counties and in the types of cases as designated by the office of the attorney general by letter sent to the presiding superior court judge of that county. Proof of service shall be filed with the court.

(3) The responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. The responding party's failure to file an answer within the time required shall result in entry of a default judgment for the petitioner.

(4) At any time after responsive pleadings are filed, either party may schedule the matter for hearing.

(5) Unless both parties stipulate to arbitration or the presiding judge authorizes oral testimony pursuant to subsection (6) of this section, a petition for modification of an order of child support shall be heard by the court on affidavits, the petition, answer, and worksheets only.

(6) A party seeking authority to present oral testimony on the petition to modify a support order shall file an appropriate motion not later than ten days after the time of notice of hearing. Affidavits and exhibits setting forth the reasons oral testimony is necessary to a just adjudication of the issues shall accompany the petition. The affidavits and exhibits must demonstrate the extraordinary features of the case. Factors which may be considered include, but are not limited to: (a) Substantial questions of credibility on a major issue; (b) insufficient or inconsistent discovery materials not correctable by further discovery; or (c) particularly complex circumstances requiring expert testimony.

**Sec. 3.** RCW 26.23.130 and 1991 c 367 s 43 are each amended to read as follows:

The department shall be given twenty calendar days prior notice of the entry of any final order and five days prior notice of the entry of any temporary order in any proceeding involving child support or maintenance if the department has a financial interest based on an assignment of support rights under RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030. Service of this notice upon the department shall be by personal service on, or mailing by any form of mail requiring a return receipt to, the office of the attorney general; except that notice shall be given to the office of the prosecuting attorney for the county in which the action is filed in lieu of the office of the attorney general in those counties and in the types of cases as designated by the office of the attorney general by letter sent to the presiding superior court judge of that county. The department shall not be entitled to terms for a party's failure to serve the department within the time requirements for this section, unless the department proves that the party knew that the department had an assignment of support rights or a subrogated interest and that the failure to serve the department was intentional.

**Sec. 4.** RCW 74.20.065 and 1983 1st ex.s. c 41 s 31 are each amended to read as follows:

If the legal custodian has been wrongfully deprived of physical custody, the department is authorized to excuse the custodian from support payments for a child or children receiving or on whose behalf public assistance was provided under chapter 74.12 RCW, or for a child or children on behalf of whom the department is providing nonassistance support enforcement services.

Sec. 5. RCW 74.20A.055 and 1997 c 58 s 940 are each amended to read as follows:

(1) The secretary may, ~~((in the absence of a superior court))~~ if there is no order((-)) that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring ~~((a responsible parent or))~~ the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: **PROVIDED**, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the ~~((recipient or custodian))~~ custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why ~~((said responsible parent should not be determined~~

~~to be liable for any or all of the debt, past and future))~~ the terms set forth in the notice should not be ordered;

(d) A statement that, if ~~neither~~ the responsible parent (~~((fails))~~) nor the custodial parent files in a timely fashion ((to file)) an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection. ~~((An adjudicative proceeding shall be held in the county of residence or other place convenient to the responsible parent.))~~

(a) If the responsible parent or custodial parent files the application within twenty days, the ~~((department))~~ office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the ~~((parents'))~~ support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent (~~((fails))~~) and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year of the date of service, the ~~((department))~~ office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the ~~((parent's))~~ support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the ~~((department))~~ office of administrative hearings shall schedule an adjudicative proceeding at which the ~~((responsible))~~ parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the ((parent's)) support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The ((responsible)) petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection

action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the presiding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

**Sec. 6.** RCW 74.20A.056 and 1997 c 58 s 941 are each amended to read as follows:

(1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him and the custodial parent. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested, on the alleged father. The custodial parent shall be served by first class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) The alleged father or custodial parent may file an application for an adjudicative proceeding at which ~~((he))~~ they both will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father or mother, if she is also the custodial parent, may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If neither the alleged father ~~((does not request))~~ nor the custodial parent requests that a blood or genetic test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.



(2) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department. A custodian who is not the parent of a child and who has physical custody of a child has the same notice and hearing rights that a custodial parent has under this section.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father (~~((who denies being a responsible parent))~~) or the mother, if she is also the custodial parent, may request that a blood or genetic test be administered at any time. The request for testing shall be in writing, or as the department may specify by rule, and served on the division of child support (~~((personally or by registered or certified mail))~~). If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's and mother's, if she is also the custodial parent, last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father or mother, if she is also the custodial parent, may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under RCW 26.26.060 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father or mother and the decision of the court is that the alleged father is a natural parent, the (~~alleged father~~) parent who requested the test shall be liable for court costs incurred.

(7) If the alleged father or mother, if she is also the custodial parent, does not request the division of child support to initiate a superior court action, or (~~if the alleged father~~) fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060.

(8)(a) If an alleged father has signed an affidavit acknowledging paternity that has been filed with the state registrar of vital statistics after July 1, 1997, within sixty days from the date of filing of the acknowledgment:

(i) The division of child support may serve a notice and finding of parental responsibility on him and the custodial parent as set forth under this section; and

(ii) The alleged father or any other signatory may rescind his acknowledgment of paternity. The rescission shall be notarized and delivered to the state registrar of vital statistics personally or by registered or certified mail. The state registrar shall remove the father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate or any other name that the mother may select. The state registrar shall file rescission notices in a sealed file. All future paternity actions on behalf of the child in question shall be performed under court order.

(b) If neither the alleged father (~~does not~~) nor the custodial parent files an application for an adjudicative proceeding or (~~rescind his~~) rescinds the acknowledgment of paternity, the amount of support stated in the notice and finding of parental responsibility becomes final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.

(c) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(d) If an alleged father or mother, if she is also the custodial parent, makes a request for genetic testing, the department shall proceed as set forth under RCW 74.20.360.

(e) If neither the alleged father (~~((does not))~~) nor the custodial parent requests an adjudicative proceeding, or if neither the alleged father (~~((fails to rescind his))~~) nor the mother rescinds the filed acknowledgment of paternity, the notice of parental responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060.

(9) Affidavits acknowledging paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26 and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section.

**Sec. 7.** RCW 74.20A.080 and 2000 c 86 s 8 are each amended to read as follows:

(1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested;

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means; ((or))

(iv) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (d)(i) or (ii) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement; or

(v) By regular mail to an address if designated by the financial institution as a central levy or garnishment address, and if the notice is clearly identified as a levy or garnishment order. Before the division of child support may initiate an action for noncompliance with a withholding action against a financial institution, the division of child support must serve the order to withhold and deliver on the financial institution in the manner described in (d)(i) or (ii) of this subsection.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in this state or in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein; and

(b) Provide further and additional answers when requested by the secretary.

(5) The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the order to withhold and deliver in the case where the order was served by regular mail.

(6) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Within seven working days deliver the property to the secretary;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary within seven working days of the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary within seven working days of the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(7) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order;

(c) A person or entity, other than an employer as defined in Title 50 RCW, who has received the order to withhold and deliver does not possess property of or owe money to the debtor; or

(d) An employer who has received the order to withhold and deliver no longer employs, contracts, or owes money to the debtor under a contract of employment, express or implied.

(8) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state, or agency, subdivision, or instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(9) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(10) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

(11) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(12) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(13) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to

withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

(14) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.

(15) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver.

**NEW SECTION. Sec. 8.** RCW 74.20A.058 (Adjudicative proceeding contesting parental responsibility—Notice to mother) and 1989 c 55 s 5 are each repealed.

Passed the Senate March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 200

[Senate Bill 6832]

### INTERPRETER SERVICES—PUBLIC ASSISTANCE RECIPIENTS

AN ACT Relating to interpreter services for public assistance recipients; amending RCW 39.29.040 and 43.19.190; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that limited-English speaking and sensory-impaired applicants and recipients of public assistance often require interpreter services in order to communicate effectively with employees of the department of social and health services, medical professionals, and other social services personnel. The legislature further finds that interpreter services can be procured and delivered through a variety of different means. It is in the public's interest for the department to deliver interpreter services, to the extent funds are available, by the means which it determines most cost-effectively ensure that limited-English speaking and sensory-impaired persons are able to communicate with department employees and service providers.

**Sec. 2.** RCW 39.29.040 and 1998 c 101 s 7 are each amended to read as follows:

This chapter does not apply to:

(1) Contracts specifying a fee of less than five thousand dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed five thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation; ~~(and)~~

(9) Contracts for bank supervision authorized under RCW 30.38.040; and

(10) Contracts for interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance.

**Sec. 3.** RCW 43.19.190 and 1995 c 269 s 1401 are each amended to read as follows:

The director of general administration, through the state purchasing and material control director, shall:

(1) Establish and staff such administrative organizational units within the division of purchasing as may be necessary for effective administration of the provisions of RCW 43.19.190 through 43.19.1939;

(2) Purchase all material, supplies, services, and equipment needed for the support, maintenance, and use of all state institutions, colleges, community colleges, technical colleges, college districts, and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state: **PROVIDED**, That the provisions of RCW 43.19.190 through 43.19.1937 do not apply in any manner to the operation of the state legislature except as requested by the legislature: **PROVIDED**, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor: **PROVIDED**, That primary authority for the purchase of specialized equipment, instructional, and research material for their own use shall rest with the colleges, community colleges, and universities: **PROVIDED FURTHER**, That universities operating

hospitals and the state purchasing and material control director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations: PROVIDED FURTHER, That primary authority for the purchase of materials, supplies, and equipment for resale to other than public agencies shall rest with the state agency concerned: PROVIDED FURTHER, That authority to purchase services as included herein does not apply to personal services as defined in chapter 39.29 RCW, unless such organization specifically requests assistance from the division of purchasing in obtaining personal services and resources are available within the division to provide such assistance: PROVIDED FURTHER, That the authority for the purchase of insurance and bonds shall rest with the risk manager under RCW 43.19.1935: PROVIDED FURTHER, That, except for the authority of the risk manager to purchase insurance and bonds, the director is not required to provide purchasing services for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029: PROVIDED FURTHER, That the authority to purchase interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance shall rest with the department of social and health services;

(3) Have authority to delegate to state agencies authorization to purchase or sell, which authorization shall specify restrictions as to dollar amount or to specific types of material, equipment, services, and supplies. Acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with other sections of RCW 43.19.190 through 43.19.1939, or from policies established by the director. Also, delegation of such authorization to a state agency, including an educational institution to which this section applies, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies as established herein;

(4) Contract for the testing of material, supplies, and equipment with public and private agencies as necessary and advisable to protect the interests of the state;

(5) Prescribe the manner of inspecting all deliveries of supplies, materials, and equipment purchased through the division;

(6) Prescribe the manner in which supplies, materials, and equipment purchased through the division shall be delivered, stored, and distributed;

(7) Provide for the maintenance of a catalogue library, manufacturers' and wholesalers' lists, and current market information;

(8) Provide for a commodity classification system and may, in addition, provide for the adoption of standard specifications;



(9) Provide for the maintenance of inventory records of supplies, materials, and other property;

(10) Prepare rules and regulations governing the relationship and procedures between the division of purchasing and state agencies and vendors;

(11) Publish procedures and guidelines for compliance by all state agencies, including those educational institutions to which this section applies, which implement overall state purchasing and material control policies;

(12) Advise state agencies, including educational institutions, regarding compliance with established purchasing and material control policies under existing statutes.

Passed the Senate March 12, 2002.

Passed the House March 13, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 201

[Engrossed Substitute Senate Bill 6347]

### TRANSPORTATION FUNDING

AN ACT Relating to transportation funding and appropriations; adding a new section to chapter 47.05 RCW; adding a new section to chapter 47.08 RCW; creating new sections; making appropriations; authorizing expenditures for capital improvements; and declaring an emergency.

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

### TRANSPORTATION INVESTMENT

**NEW SECTION. Sec. 1.** (1) The legislature recognizes that a good transportation system is critical in keeping Washington state's economy strong and its businesses competitive. The legislature further recognizes that badly needed investments in our state's transportation infrastructure will create jobs and help to ensure Washington's long-term economic success.

(2) The transportation investment act of 2002 is hereby adopted and, subject to the provisions set forth in this act, the several amounts hereinafter specified, or as much thereof as may be necessary to accomplish the purposes designated, are hereby appropriated from the several accounts and funds hereinafter named to the designated state agencies and offices for employee compensation and other expenses, for capital projects, and for other specified purposes, including the payment of any final judgments arising out of such activities, for the period ending June 30, 2003.

(3) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout the act.

(a) "Fiscal year 2002" or "FY 2002" means the fiscal year ending June 30, 2002.

(b) "Fiscal year 2003" or "FY 2003" means the fiscal year ending June 30, 2003.

(c) "FTE" means full-time equivalent.

(d) "Lapse" or "revert" means the amount shall return to an unappropriated status.

(e) "Provided solely" means the specified amount may be spent only for the specified purpose.

**OPERATING—GENERAL GOVERNMENT AGENCIES**

**NEW SECTION. Sec. 101. FOR THE DEPARTMENT OF REVENUE**

Multimodal Transportation Account—State

Appropriation . . . . . \$ 100,000

**OPERATING—TRANSPORTATION AGENCIES**

**NEW SECTION. Sec. 201. REGIONAL TRANSPORTATION**

**PLANNING.** \$3,000,000 of the motor vehicle fund—state is appropriated to the department of transportation and is provided solely for the expenses associated with the regional transportation investment district planning committee responsibilities established in Engrossed Second Substitute Senate Bill No. 6140.

**NEW SECTION. Sec. 202. TRANSPORTATION EFFICIENCIES.**

\$1,225,100 of the motor vehicle fund—state is appropriated to the department of transportation and provided solely for the department to implement the state's responsibilities as outlined in chapter 5, Laws of 2002.

**\*NEW SECTION. Sec. 203. FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V**

<b>Project</b>	<b>2001-03 Total Recommended</b>	<b>Future Biennia (projected cost)</b>
Transit	\$19,890,000	\$430,110,000
Paratransit	\$3,600,000	\$71,400,000
Rural Mobility Grants	\$3,600,000	\$71,400,000
Vanpool Expansion	\$1,910,000	\$37,890,000
Commute Trip Reduction	\$6,000,000	\$94,000,000
Park and Rides	\$4,000,000	\$76,000,000
Appropriation:		
Multimodal Transportation Account—State . . . . .	\$	36,000,000
Motor Vehicle Account—State . . . . .	\$	3,000,000
Prior Biennia (Expenditures)		
Multimodal Transportation Account—State . . . . .	\$	0
Motor Vehicle Account—State . . . . .	\$	0
Future Biennia (Projected Costs)		
Multimodal Transportation Account—State . . . . .	\$	743,800,000
Motor Vehicle Account—State . . . . .	\$	37,000,000
<b>TOTAL . . . . .</b>	<b>\$</b>	<b>819,800,000</b>

The appropriations provided in this section are provided solely for the following purposes and are subject to the following conditions and limitations:

(1) The department shall work cooperatively with the agency council on coordinated transportation and the Washington state transit association to establish grant application procedures and selection criteria for paratransit and rural mobility projects.

(2) The motor vehicle account—state appropriation in this section is provided solely for park and ride expansion.

(3) Transit funds in this section shall be distributed to transit systems as follows:

(a) 50% of funds shall be distributed based on service area population to C-Tran, Community Transit, Everett Transit, King County Metro Transit, Pierce Transit, and Spokane Transit Authority;

(b) 30% of funds shall be distributed based on service area population to: Ben Franklin Transit, Cowlitz Transit Authority, Intercity Transit, Kitsap Transit, Whatcom Transportation Authority, and Yakima Transit; and

(c) 20% of funds shall be distributed based on service area population to: Clallam Transit System, Garfield County, Grant Transit Authority, Grays Harbor Transportation Authority, Island Transit, Jefferson Transit Authority, Link Transit, Mason County Transportation Authority, Pacific Transit, Pullman Transit, Skagit Transit, Twin Transit, and Valley Transit.

(4) Commute trip reduction funds shall be allocated as follows: \$4,000,000 shall be distributed to local governments in the form of grants; \$2,000,000 shall be distributed as grants to public agencies, nonprofit organizations, developers, and property managers and as tax credits to employers' business and occupation tax, as provided in Senate Bill No. 6008. If Senate Bill No. 6008 is not enacted by the legislature by January 1, 2003, the \$2,000,000 shall be distributed to local governments in the form of grants.

***(5) In a county with a population over one hundred fifty thousand where a public transportation benefit area and a city both operate a public transportation system, funds may not be released until the transit systems develop an interlocal agreement to serve paratransit and special needs transit.***

(6) The department shall consider the following factors when making decisions regarding the appropriations provided for park and ride lots in this section: Park and ride lots shall be distributed across the state, including islands, to meet multiple service needs and shall be used for multimodal purposes, including ferries and rail.

(7) The department shall use up to \$500,000 of this appropriation to clear, expand, grade, and surface parking lots in the San Juan Islands as follows: The parking lot on Lopez Island; Lot C at Friday Harbor; and the parking lot on Orcas Island.

(8) The department shall use up to \$1,500,000 of this appropriation, in cooperation with Island County, to develop park and ride facilities on Whidbey Island.

\*Sec. 203 was partially vetoed. See message at end of chapter.

**CAPITAL—HIGHWAY IMPROVEMENTS AND PRESERVATION**

**NEW SECTION. Sec. 301. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I—MAJOR PROJECTS**

(1) SR 018, Maple Valley to I-90 Additional Lanes - (20020011)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	2,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	47,517,000
<b>TOTAL . . . . .</b>	<b>\$</b>	<b>50,017,000</b>

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$2,500,000 is provided for preconstruction.

(2) SR 090, Snoqualmie Pass East, Reconstruct and Add New Lanes - (20020025)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	15,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	85,000,000
<b>TOTAL . . . . .</b>	<b>\$</b>	<b>100,000,000</b>

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$15,000,000 is provided for preconstruction.

(3) SR 099, Alaskan Way Viaduct Replacement - (20020020)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	70,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	380,000,000
<b>TOTAL . . . . .</b>	<b>\$</b>	<b>450,000,000</b>

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$70,000,000 is provided for preconstruction.

(4) SR 167, Tacoma to Edgewood New Freeway Construction, Preliminary Engineering and Right of Way - (20020031)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	50,600,000
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Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	293,000,000
TOTAL . . . . .	\$	343,600,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$50,600,000 is provided for preconstruction.

(5) SR 395, Spokane - Hawthorne to Wandermere - (20020042)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	58,799,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	147,820,000
TOTAL . . . . .	\$	206,619,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$58,799,000 is provided for preconstruction.

(6) SR 405, Tukwila to Lynnwood Additional Lanes - (20020015)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	270,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	1,500,000,000
TOTAL . . . . .	\$	1,770,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$270,000,000 is provided for preconstruction.

(7) SR 509, Federal Way to Sea Tac South Access/Corridor Completion - (20020016)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	122,130,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	377,870,000
TOTAL . . . . .	\$	500,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$122,130,000 is provided for preconstruction.

(8) SR 520, Seattle to Bellevue - Translake - (20020021)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	38,000,000
Prior Biennia (Expenditures) . . . . .	\$	0

Future Biennia (Projected Costs) . . . . .	\$	62,000,000
TOTAL . . . . .	\$	100,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$38,000,000 is provided for preconstruction; and is intended to complete the environmental impact statement to the record of decision.

**\*NEW SECTION. Sec. 302. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I—MOBILITY AND ECONOMIC INITIATIVE IMPROVEMENT PROJECTS**

(1) SR 003, Silverdale - Waaga Way Interchange Ramp - (20020022)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	5,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	5,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$5,000,000 is provided for construction.

(2) SR 004, Svensen’s Curve - (20020061)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	720,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	4,280,000
TOTAL . . . . .	\$	5,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$720,000 is provided for preconstruction.

(3) SR 005, Chehalis to Maytown Additional Lanes and Flood Control - (20020027)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	14,600,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	70,615,000
TOTAL . . . . .	\$	85,215,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$14,600,000 is provided for preconstruction.

(4) SR 005, Chehalis Western Trail Overcrossing - (20020057)

Appropriation:

Motor Vehicle Account—State .....	\$	527,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	1,213,000
TOTAL .....	\$	1,740,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$527,000 is provided for preconstruction.

(5) SR 005, I-5/Interstate Bridge - Replacement - (20020081)

Appropriation:

Motor Vehicle Account—State .....	\$	1,000,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	1,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$1,000,000 is provided for preconstruction.

(6) SR 005, I-5/SR 502 Interchange - (20020053)

Appropriation:

Motor Vehicle Account—State .....	\$	10,100,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	12,000,000
TOTAL .....	\$	22,100,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$10,100,000 is provided for preconstruction.

(7) SR 005, Lynnwood - 196th Street Interchange - (20020034)

Appropriation:

Motor Vehicle Account—State .....	\$	2,800,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	22,200,000
TOTAL .....	\$	25,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$2,800,000 is provided for preconstruction.

(8) SR 005, Mount Vernon - 2nd Street Bridge Replacement - (20020033)

Appropriation:

Motor Vehicle Account—State .....	\$	10,000,000
Prior Biennia (Expenditures) .....	\$	0

Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	10,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$10,000,000 is provided for construction.

(9) SR 005, Smokey Point - 172nd Street NE (SR 531) Widening - (20020035)

Appropriation:

Motor Vehicle Account—State .....	\$	2,000,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	13,000,000
TOTAL .....	\$	15,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$2,000,000 is provided for preconstruction.

(10) SR 005, Vancouver - Salmon Creek to I-205 Additional Lanes - (20020002)

Appropriation:

Motor Vehicle Account—State .....	\$	35,000,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	35,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$35,000,000 is provided for construction.

(11) SR 005, Vancouver, 134th Interchange - (20020062)

Appropriation:

Motor Vehicle Account—State .....	\$	2,400,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	37,600,000
TOTAL .....	\$	40,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$2,400,000 is provided for preconstruction.

(12) SR 009, Clearview - 212th Street SE and 176th Street SE Additional Lanes - (20020036)

Appropriation:

Motor Vehicle Account—State .....	\$	1,900,000
Prior Biennia (Expenditures) .....	\$	0



Future Biennia (Projected Costs) . . . . .	\$	15,100,000
TOTAL . . . . .	\$	17,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$1,900,000 is provided for preconstruction.

(13) SR 009, Corridor Improvements - (20020063)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	10,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	40,000,000
TOTAL . . . . .	\$	50,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$10,000,000 is provided for preconstruction.

(14) SR 012, Tri-Cities to Wallula Additional Lanes - (20020044)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	3,350,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	21,650,000
TOTAL . . . . .	\$	25,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$3,350,000 is provided for preconstruction.

(15) SR 012, Walla Walla to Wallula Pre-planning Study - (20020083)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	3,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	3,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$3,000,000 is provided for preconstruction.

(16) SR 014, Camas-Washougal Vicinity New Interchange - (20020003)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	800,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	20,200,000
TOTAL . . . . .	\$	21,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$800,000 is provided for preconstruction.

(17) SR 014, Maryhill Vicinity Truck-Climbing Lane - (20020008)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	125,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	1,120,000
TOTAL . . . . .	\$	1,245,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$125,000 is provided for preconstruction.

(18) SR 020, Burlington Vicinity - Fredonia to I-5 Additional Lanes - (20020056)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	5,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	45,000,000
TOTAL . . . . .	\$	50,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$5,000,000 is provided for preconstruction.

(19) SR 031, Metaline Falls - Pend Oreille to Canadian Border All-weather Road - (20020028)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	15,540,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	15,540,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$540,000 is provided for preconstruction; and

\$15,000,000 is provided for construction.

(20) SR 090, Columbia Basin Vicinity - Truck Climbing Lanes - (20020026)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	15,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	15,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$15,000,000 is provided for construction.

(21) SR 090, Moses Lake Vicinity Bridge Replacement - (20020007)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	300,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	4,700,000
TOTAL . . . . .	\$	5,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$300,000 is provided for preconstruction.

(22) SR 090, Spokane - Argonne to Sullivan Road - (20020064)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	35,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	35,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$35,000,000 is provided for construction.

(23) SR 096, SR 96/Seattle Hill Road to SR 9 - (20020072)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	11,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	11,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$11,000,000 is provided for construction.

(24) SR 099, Shoreline Aurora Ave North Corridor - (20020065)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	10,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	10,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$10,000,000 is provided for construction.

(25) SR 101, Blyn/Gardiner Vicinity - Truck/Passing Lanes - (20020058)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	3,030,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	3,030,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$120,000 is provided for preconstruction; and

\$2,910,000 is provided for construction.

(26) West Olympia Access Study - (2002094)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	500,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$500,000 is provided for preconstruction.

(27) SR 161, Puyallup to Fife Additional Lanes - (20020030)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	980,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	44,020,000
TOTAL . . . . .	\$	45,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$980,000 is provided for preconstruction.

(28) SR 167, Corridor Study - (20020085)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	8,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	8,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$8,000,000 is provided for preconstruction.

(29) SR 205, I-205/SR 14 to 83rd St - Widening - (20020054)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	5,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	41,000,000
TOTAL . . . . .	\$	46,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$5,000,000 is provided for preconstruction.

(30) SR 205, Vancouver - Mill Plain Exit (112th Connector) - (20020090)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	2,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	10,000,000
TOTAL . . . . .	\$	12,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$2,000,000 is provided for preconstruction.

(31) SR 240, Tri-Cities Additional Lanes - (20020001)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	5,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	40,000,000
TOTAL . . . . .	\$	45,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$5,000,000 is provided for preconstruction.

(32) SR 241, North Sunnyside Reconstruction - (20020051)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	470,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	8,410,000
TOTAL . . . . .	\$	8,880,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$470,000 is provided for preconstruction.

(33) SR 270, Pullman to Idaho State Line Additional Lanes - (20020048)

Appropriation:

Motor Vehicle Account—State .....	\$	3,661,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	21,339,000
TOTAL .....	\$	25,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$3,661,000 is provided for preconstruction.

(34) SR 304, Bremerton SR 3 to Bremerton Ferry Terminal Additional Lanes - (20020023)

Appropriation:

Motor Vehicle Account—State .....	\$	11,000,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	11,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$11,000,000 is provided for construction.

(35) SR 504, Toll Road Study - Mount Saint Helens - (20020086)

Appropriation:

Motor Vehicle Account—State .....	\$	350,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	350,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$350,000 is provided for preconstruction.

(36) SR 519, South Seattle Intermodal Access, Interchange Improvements and Additional Lanes - (20020017)

Appropriation:

Motor Vehicle Account—State .....	\$	1,100,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	39,000,000
TOTAL .....	\$	40,100,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$1,100,000 is provided for preconstruction.

(37) SR 520, Redmond - W Lake Sammamish Parkway to SR 202 Additional Lanes - (20020018)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	4,800,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	65,200,000
TOTAL . . . . .	\$	70,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$4,800,000 is provided for preconstruction.

(38) SR 522, Woodinville - Paradise Lake Road to Snohomish River - (20020038)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	24,095,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	15,905,000
TOTAL . . . . .	\$	40,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$295,000 is provided for preconstruction; and

\$23,800,000 is provided for construction.

(39) SR 524, Lynnwood - 24th Avenue SW to SR 527 Additional Lanes - (20020039)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	16,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	16,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$150,000 is provided for preconstruction; and

\$15,850,000 is provided for construction.

(40) SR 531, SR 531/43rd Ave NE to 67th Ave NE - (20020075)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	6,890,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	6,890,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$6,890,000 is provided for preconstruction.

(41) SR 539, Bellingham - Laurel to SR 9 via Badger Road - (20020046)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	10,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	52,650,000
TOTAL . . . . .	\$	63,150,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$10,500,000 is provided for preconstruction.

(42) SR 542, SR 542/Orleans to Britton Rd - Widening - (20020076)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	4,724,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	4,724,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$1,700,000 is provided for preconstruction; and

\$3,024,000 is provided for construction.

(43) SR 542, Sunset Drive Street Improvements - (20020089) Appropriation:

Motor Vehicle Account—State . . . . .	\$	2,800,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	2,800,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$2,800,000 is provided for construction.

(44) SR 543, Blaine - I-5 to Canadian Border Additional Lanes for Freight - (20020047)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	17,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	17,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$600,000 is provided for preconstruction; and

\$16,400,000 is provided for construction.

(45) SR 605, Toll Road - King County Bypass Study - (20020084)

Appropriation:



<i>Motor Vehicle Account—State</i> .....	\$	350,000
<i>Prior Biennia (Expenditures)</i> .....	\$	0
<i>Future Biennia (Projected Costs)</i> .....	\$	0
<b>TOTAL</b> .....	\$	<b>350,000</b>

*The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:*

*\$350,000 is provided for preconstruction.*

*The appropriation in this subsection is provided solely for the middle Washington corridor study. The department of transportation, in consultation with local officials and residents of the area, shall conduct a study to determine the feasibility of creating a new north-south corridor as an alternative to state route 5 and state route 405, which would run from approximately the Canadian border in the northern portion of the state to approximately Lewis county in the southern portion of the state. The department shall report to the legislature, no later than December 31, 2002, on the feasibility of financing and constructing such a corridor.*

(46) SR 900, Issaquah - SE 78th Street to Issaquah Additional Lanes - (20020019)

Appropriation:

Motor Vehicle Account—State .....	\$	1,200,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	13,400,000
<b>TOTAL</b> .....	\$	<b>14,600,000</b>

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$1,200,000 is provided for preconstruction.

\*Sec. 302 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 303. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I—HOV PROJECTS**

(1) SR 005, Everett - SR 526 to US 2 HOV Lanes - (20020055)

Appropriation:

Motor Vehicle Account—State .....	\$	8,300,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	221,700,000
<b>TOTAL</b> .....	\$	<b>230,000,000</b>

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$8,300,000 is provided for preconstruction.

(2) SR 005, Pierce County Line to Tukwila HOV - (20020009)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	3,191,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	66,000,000
TOTAL . . . . .	\$	69,191,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$3,191,000 is provided for preconstruction.

(3) SR 005, SR 16 - Tacoma/Pierce County HOV (Narrows Bridge) - (20020029)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	110,314,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	246,686,000
TOTAL . . . . .	\$	357,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$7,740,000 is provided for preconstruction; and  
\$102,574,000 is provided for construction.

(4) SR 167, Auburn - 15th Street SW to 15th Street NW HOV - (20020012)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	20,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	17,240,000
TOTAL . . . . .	\$	37,240,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$50,000 is provided for preconstruction; and  
\$19,950,000 is provided for construction.

**\*NEW SECTION. Sec. 304. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I—SAFETY IMPROVEMENT PROJECTS**

(1) SR 012, Yakima Vicinity - Old Naches Hwy Interchange - (20020049)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	640,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	34,400,000
TOTAL . . . . .	\$	35,040,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$640,000 is provided for preconstruction.

(2) SR 007, SR 7/SR 507 to SR 512 - Safety - (20020077)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	9,504,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	9,504,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

***\$9,504,000 is provided for preconstruction.***

(3) SR 500, Vancouver - New Interchanges and Additional Lanes - (20020004)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	24,300,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	24,300,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$1,300,000 is provided for preconstruction; and

\$23,000,000 is provided for construction.

(4) Safety Improvement Projects - (20020902)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	28,001,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	5,077,160
TOTAL . . . . .	\$	33,078,160

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

The department shall develop a list of projects that reflect 125% of the funds appropriated in this subsection and submit the list to the office of financial management. The list shall include the following projects:

- (a) US 101/Corriea Road Vicinity to Zaccardo Road;
- (b) SR 104/Jct SR 19 Intersection Safety;
- (c) SR 112/Hoko-Ozette Road - Safety;
- (d) SR 161/SR 167 Eastbound Ramp - Safety;
- (e) SR 22/I-82 to McDonald Road;
- (f) SR 201 Deception Pass and Canoe Pass Bridges;

- (g) SR 160, SR 160/SR 16 to Long Lake Vicinity; and
- (h) SR 161, 128th to 176th - Safety.

Expenditures may not occur until approved by the office of financial management and may only occur for those projects on the list.

\*Sec. 304 was partially vetoed. See message at end of chapter.

**\*NEW SECTION. Sec. 305. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I—ENVIRONMENTAL RETROFIT IMPROVEMENT PROJECTS**

- (1) SR 005, I-5/SR 520 Interchange Vicinity - (20020070)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	386,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	3,220,000
TOTAL . . . . .	\$	3,606,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

\$386,000 is provided for preconstruction.

- (2) SR 106, Skobob Creek - (20020010)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	1,250,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,250,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely for reconstruction of a bridge at Skobob Creek on highway 106 in Mason county and shall be matched by funds provided by the Hood Canal salmon enhancement group. ***The project is subject to review and approval by the department, but the Hood Canal salmon enhancement group shall manage the project.***

- (3) Noise Wall Projects - (20020095)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	1,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	9,000,000
TOTAL . . . . .	\$	10,000,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

The department shall develop a list of projects that reflect 125% of the funds appropriated in this subsection and submit the list to the office of financial

management. Expenditures may not occur until approved by the office of financial management and may only occur for those projects on the list.

(4) Environmental Retrofit Projects - (20020903)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	10,320,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	1,077,000
TOTAL . . . . .	\$	11,397,000

The appropriation provided in this subsection is subject to the following conditions and limitations and section 804 of this act:

The department shall develop a list of projects that reflect 125% of the funds appropriated in this subsection and submit the list to the office of financial management. Expenditures may not occur until approved by the office of financial management and may only occur for those projects on the list.

\*Sec. 305 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 306. FOR THE DEPARTMENT OF TRANSPORTATION—PRESERVATION—PROGRAM P**

SR 101, Purdy Creek Bridge Replacement - (20020091)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	6,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	6,000,000

(1) The appropriation provided in this section is provided solely for a by-pass or replacement of Purdy Creek Bridge on SR 101, which may include up to 1,100 feet of elevated roadway.

(2) The appropriation provided in this section is subject to the following conditions and limitations and section 804 of this act:

- \$2,400,000 is provided for preconstruction; and
- \$3,600,000 is provided for construction.

**NEW SECTION. Sec. 307. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM Z—LOCAL PROJECTS**

SR 000, I-5 to SR 7 Cross Base Highway - (20020067)

Appropriation:

Motor Vehicle Account—State . . . . .	\$	1,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,000,000

The appropriation provided in this section is subject to section 804 of this act.

NEW SECTION. **Sec. 308.** The motor vehicle account—state appropriations for projects contained in sections 301 through 307 of this act, include \$156,000,000 in proceeds from the sale of bonds authorized by RCW 47.10.843. The secretary of transportation may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

**CAPITAL—WASHINGTON STATE FERRIES CONSTRUCTION**

NEW SECTION. **Sec. 401. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Four Replacement Auto/Passenger Ferries - Design and Construction

Appropriation:

Motor Vehicle Account—State .....	\$	4,128,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	317,761,000
<b>TOTAL .....</b>	<b>\$</b>	<b>321,889,000</b>

The appropriation in this section is provided solely for the department to initiate the process for the procurement of four new auto passenger ferries to replace the steel electric ferries. The department shall use the modified request for proposals design and build partnership process contained in RCW 47.60.810 through 47.60.822. The appropriation referenced in this subsection constitutes legislative authority to proceed with the procurement process under RCW 47.60.814.

NEW SECTION. **Sec. 402. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Anacortes Multimodal Terminal - Design

Appropriation:

Motor Vehicle Account—State .....	\$	518,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	118,402,000
<b>TOTAL .....</b>	<b>\$</b>	<b>118,920,000</b>

NEW SECTION. **Sec. 403. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Mukilteo Multimodal Terminal - Design

Appropriation:

Motor Vehicle Account—State .....	\$	1,810,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	105,943,000

TOTAL ..... \$ 107,753,000

**NEW SECTION. Sec. 404. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Edmonds Multimodal Terminal - Design

Appropriation:

Motor Vehicle Account—State .....	\$	2,200,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	2,200,000

**NEW SECTION. Sec. 405. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Passenger-Only Vessel and Terminal Projects - Design and Construction

Appropriation:

Multimodal Transportation Account—State .....	\$	5,716,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	45,541,000
TOTAL .....	\$	51,257,000

The appropriation in this section is provided for the acquisition of passenger-only vessels and the costs associated with the design and construction of passenger-only terminal facilities necessary to begin passenger-only ferry service on the Seattle/Kingston route by September 2003 and the Seattle/Southworth route by September 2007.

**NEW SECTION. Sec. 406. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Catch-up Preservation for Terminals and Vessels

Appropriation:

Motor Vehicle Account—State .....	\$	11,690,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	88,548,000
TOTAL .....	\$	100,238,000

**NEW SECTION. Sec. 407. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Seattle Pier 48 Acquisition/Relocation - Right of Way

Appropriation:

Motor Vehicle Account—State .....	\$	7,075,000
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Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	1,860,000
TOTAL . . . . .	\$	8,935,000

**NEW SECTION. Sec. 408.** The motor vehicle—state appropriations for projects contained in sections 401 through 407 of this act, include \$4,128,000 in proceeds from the sale of bonds authorized by RCW 47.10.843. The secretary of transportation may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

**CAPITAL—RAIL CONSTRUCTION**

**NEW SECTION. Sec. 501. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL**

Passenger Rail Capital Improvements - Design, Right of Way, and Construction

Appropriation:

Multimodal Transportation Account—State . . . . .	\$	18,487,000
Multimodal Transportation Account—Federal . . . . .	\$	42,056,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	791,451,000
TOTAL . . . . .	\$	851,994,000

The appropriation in this section is provided for programs including, but not limited to the Vancouver rail project, high-speed upgrades in King, Snohomish, and Whatcom counties, and capacity improvements between Seattle and Everett.

\$9,200,000 from the multimodal transportation account—state is provided solely for capacity improvements between Seattle and Everett; however, should federal funding for this project be granted, the department shall use any portion of the \$9,200,000 not needed for state match purposes for other passenger rail high speed track improvements.

**NEW SECTION. Sec. 502. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL**

Freight Rail Assistance Program - Design, Right of Way, and Construction

Appropriation:

Multimodal Transportation Account—State . . . . .	\$	9,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	85,140,000
TOTAL . . . . .	\$	94,640,000

The appropriation in this section is provided for the design, right of way, and construction costs for the freight rail assistance program including but not limited to the following projects: Grays Harbor County saw mill spur; lumber spur to tribal sawmill in Yakima County; Yakima County improvements; Cascade and



Columbia River upgrade; various 286,000 pound upgrade projects; and City of Yelm railroad.

**NEW SECTION. Sec. 503. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL**

Washington Fruit Express - Design, Right of Way, and Construction

Appropriation:

Multimodal Transportation Account—State . . . . .	\$	700,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	1,600,000
TOTAL . . . . .	\$	2,300,000

The appropriation in this section is provided for the construction of truck to rail loading docks in Skagit County.

**CAPITAL—LOCAL PROGRAMS**

**NEW SECTION. Sec. 601. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

School Safety Enhancements

Appropriation:

Motor Vehicle Account—State . . . . .	\$	1,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	14,000,000
TOTAL . . . . .	\$	15,000,000

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity: The department shall only obligate funds or enter into contracts for projects to the extent a motor vehicle account appropriation is provided in this section.

**NEW SECTION. Sec. 602. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

Main Street Pavement Program

Appropriation:

Motor Vehicle Account—State . . . . .	\$	2,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	23,000,000
TOTAL . . . . .	\$	25,000,000

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

- (1) The department shall only obligate funds or enter into contracts for projects to the extent a motor vehicle account appropriation is provided in this section.

(2) The department shall develop a main street paving program. The program shall utilize a pavement maintenance system with a goal of maintaining streets between PCR ratings of 60 and 100, or an equivalent measure, in cities under 10,000 in total population.

(3) It is the intent of the legislature that the main street paving program remain an ongoing program.

**NEW SECTION. Sec. 603. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

Community Economic Revitalization (CERB) - Rural Economic Vitality

Appropriation:

Motor Vehicle Account—State . . . . .	\$	2,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	28,000,000
TOTAL . . . . .	\$	30,000,000

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The department shall only obligate funds or enter into contract for projects to the extent a motor vehicle account appropriation is provided in this section.

(2) The appropriation in this section is provided solely for grants for transportation capital investments that benefit economic development in rural areas. Grant program criteria shall be the same as the 1999-2000 rural economic vitality program except, grants must not be made to cities with a population of more than 10,000.

**NEW SECTION. Sec. 604. FOR THE TRANSPORTATION IMPROVEMENT BOARD—CAPITAL**

County Corridor Congestion Relief

Appropriation:

Motor Vehicle Account—State . . . . .	\$	5,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	50,000,000
TOTAL . . . . .	\$	55,000,000

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The board shall only obligate funds or enter into contracts for projects to the extent a motor vehicle account appropriation is provided in this section.

(2) The board shall consult with the highways and local programs service center at the department of transportation and the Washington state association of counties to create a county corridor congestion relief program. For the purposes of this program, a corridor is an existing or proposed set of county designated arterial roadways that provides continuous primary connectivity between major transportation facilities or destinations. Eligible projects include roadway

widening, channelization, signalization, HOV lanes, and intelligent transportation systems.

(3) It is the intent of the legislature that the county corridor program remain an ongoing program.

**NEW SECTION. Sec. 605. FOR THE TRANSPORTATION IMPROVEMENT BOARD—CAPITAL**

**City Corridor Congestion Relief**

Appropriation:

Motor Vehicle Account—State .....	\$	5,000,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	50,000,000
<b>TOTAL .....</b>	<b>\$</b>	<b>55,000,000</b>

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The board shall only obligate funds or enter into contracts for projects to the extent a motor vehicle account appropriation is provided in this section.

(2) The board shall consult with the highways and local programs service center at the department of transportation to create a city corridor congestion relief program. The program shall provide funding for congested urban corridors, as defined and selected by the transportation improvement board in consultation with the association of Washington cities. Eligible projects include roadway widening, channelization, signalization, HOV lanes, and intelligent transportation systems. The agency shall require an appropriate matching component for city corridor grants. Cities shall use motor fuel tax revenue distributed to cities and towns in RCW 46.68.090 to meet the agency match criteria.

(3) It is the intent of the legislature that the city corridor program remains an ongoing program.

**NEW SECTION. Sec. 606. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

**Freight Mobility Strategic Investment Board**

Appropriation:

Freight Mobility Account—State .....	\$	8,400,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	107,600,000
<b>TOTAL .....</b>	<b>\$</b>	<b>116,000,000</b>

The appropriation in this section is subject to the following conditions and limitations:

(1) The department and freight mobility strategic investment board shall only obligate funds or enter into contract for projects to the extent a freight mobility account—state appropriation is provided in this section.

(2) The freight mobility account—state appropriation in this section is provided for the following local freight projects as identified by the freight mobility strategic investment board:

- East Marginal Way Ramps
- Lincoln Ave. Grade Separation
- 41st St/Riverfront Parkway (Phase 2)
- South Spokane St. Viaduct
- Shaw Rd. Extension
- SR 397 Ainsworth Ave. Grade Crossing
- D St. Grade Separation
- North Canyon Rd. Exten./BNSF Overcrossing
- Columbia Center Blvd. Railroad Crossing
- Colville Alternate Truck Route
- SR 125/SR 12 Interconnect (Myra Rd. Exten.)
- Edison St. Railroad Crossing
- Washington St. Railroad Crossing
- E. Marine View Drive Widening
- Port of Kennewick Road (Exten. of Piert Rd.)
- S 228th Street Extension & Grade Separation
- City of Yakima Grade Separated Rail Crossing
- Duwamish Intelligent Transportation Systems (ITS)
- Lander Street Overcrossing
- Grain Terminal Track Improvements
- Park Road BNSF Grade Separation Project

(3) The freight mobility account—state appropriation of \$8,400,000 includes \$8,400,000 in proceeds from the sale of bonds authorized by RCW 47.10.843. The transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

(4) Funds from the appropriation in this section may only be expended with authorization from the freight mobility strategic investment board.

**TRANSFERS AND DISTRIBUTIONS**

**NEW SECTION. Sec. 701. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALES DISCOUNTS AND DEBT TO BE PAID BY MOTOR VEHICLE FUND AND TRANSPORTATION FUND REVENUE**

Highway Bond Retirement Account Appropriation . . . . .	\$	8,195,000
Motor Vehicle Account—State Appropriation . . . . .	\$	1,750,000
TOTAL . . . . .	\$	9,945,000

**NEW SECTION. Sec. 702. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND**

**REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES**

Motor Vehicle Account—State Appropriation . . . . . \$ 340,000

**NEW SECTION. Sec. 703. FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION**

Motor Vehicle Account—State Appropriation  
 for revenue distribution to the cities . . . . . \$ 5,843,000  
 Motor Vehicle Account—State Appropriation  
 for distribution to the counties . . . . . \$ 5,843,000  
**TOTAL . . . . . \$ 11,686,000**

The distributions in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

- (1) The motor vehicle account—state appropriation to cities is to be distributed consistent with RCW 46.68.110 (4) and (5). Deductions shall not be made for supervision, studies, or the city hardship assistance program.
- (2) The distribution to counties shall be distributed in a manner consistent with RCW 46.68.122. Deductions shall not be made for supervision, studies, or the city hardship assistance program.
- (3) The amounts provided in this section may not be used to supplant any existing local government funding for transportation projects or programs. Any local government in violation of this requirement shall immediately forfeit its eligibility for future distributions provided under this section.

**NEW SECTION. Sec. 704. FOR THE STATE TREASURER—TRANSFERS**

Motor Vehicle Account—State Appropriation  
 for transfer to the freight mobility  
 account . . . . . \$ 8,400,000

**MISCELLANEOUS**

**NEW SECTION. Sec. 801.** (1) Agencies shall expedite the expenditure of appropriations in order to: (a) Make transportation improvements and rehabilitate transportation infrastructure resources; (b) accelerate transportation related environmental rehabilitation and restoration projects for the improvement of the state’s natural environment; (c) reduce additional costs associated with acquisition and construction inflationary pressures; and (d) provide additional employment opportunities associated with transportation capital expenditures.

(2) In order to meet the goals of this section, (2) to the extent feasible, agencies are directed to accelerate expenditures and may use contracted design and construction services wherever necessary to meet the goals of this section.

**NEW SECTION. Sec. 802.** To the extent practicable, all state, county, city, local, or municipal projects paid for in whole or in part with funds appropriated in this act shall consider pavement life-cycle costs in determining pavement types.

**NEW SECTION. Sec. 803.** The amounts shown under the headings "Prior Biennia," "Future Biennia," and "Total" in this act are for informational purposes only and do not constitute legislative approval of these amounts. The amounts shown under the heading "Future Biennia" are advisory only and reflect the current best available estimates of project costs and may include but are not limited to the following funding sources: State, local, regional, federal, or private funds.

**NEW SECTION. Sec. 804.** The governor, through the office of financial management, may authorize a transfer of appropriation authority provided for a capital project that is in excess of the amount required for the completion of such project to another capital project for which the appropriation is insufficient. No such transfer may be used to expand or limit the scope of the project beyond that intended by the legislature in making the appropriation. Such transfers may be effected only between capital appropriations to a specific department or agency and only between capital projects that are funded from the same fund or account. No transfers may occur between projects to local government agencies except where the grants are provided within a single omnibus appropriation and where such transfers are specifically authorized by the implementing statutes which govern the grants.

For purposes of this section, the governor may find that an amount is in excess of the amount required for the completion of a project only if: (1) The project defined in the notes to the budget document is substantially complete and there are funds remaining; (2) bids have been let on a project and it appears to a substantial certainty that the project as defined in the notes to the budget document can be completed within the biennium for less than the amount appropriated in this act; or (3) the secretary of transportation determines that the allocation for the preconstruction phase of the project is in excess of the amount necessary to reach the construction or request for proposal phase.

For the purposes of this section, the legislature intends that each project be defined as proposed to the legislature in the governor's budget document, unless it clearly appears from the legislative history that the legislature intended to define the scope of a project in a different way.

A report of any transfer effected under this section, except emergency projects or any transfer under \$250,000, shall be filed with the legislative transportation committees of the senate and the house of representatives by the office of financial management at least thirty days before the date the transfer is effected. The office of financial management shall report all emergency or smaller transfers within thirty days from the date of transfer.

**NEW SECTION. Sec. 805.** Upon completion of the Vancouver high-occupancy vehicle lanes pilot project that began on October 28, 2001, and concludes October 28, 2002, the department of transportation may only proceed with future high-occupancy vehicle lane projects in counties with a population of 300,000 or more that border the state of Oregon, when vehicle spaces at park and ride lots within the county are two and one-half times the capacity in existence on

January 1, 2002, or if the Interstate 5 bridge over the Columbia River is retrofitted to include four southbound general purpose lanes.

**NEW SECTION. Sec. 806.** All of the projects for which money is appropriated in sections 301 through 307 of this act are eligible for the permit processes enumerated under chapter 47.06C RCW and developed by the transportation permit efficiency and accountability committee. To the extent practicable, work on these projects shall utilize the processes enumerated under chapter 47.06C RCW and developed by the transportation permit efficiency and accountability committee.

**NEW SECTION. Sec. 807.** Unless otherwise specified, the appropriations for highway capacity expansion in sections 301 through 307 of this act are provided solely for general purpose highway lanes.

**NEW SECTION. Sec. 808.**

Motor Vehicle Account—State Appropriation . . . . . \$ 47,392

The appropriation in this section is subject to the following conditions and limitations: The department of agriculture shall make an adhesive label explaining that Washington state gas taxes are for highway purposes only. The label must be in a large, easily readable font and shall read "Washington state gas taxes are used exclusively for highway purposes." The label should be chemical and weather resistant and shall be placed in a conspicuous location at motor fuel retailers as defined in RCW 19.120.010, by December 31, 2002.

**NEW SECTION. Sec. 809.** A new section is added to chapter 47.05 RCW to read as follows:

This chapter does not apply to the 2001-03 transportation budget appropriating new transportation revenue.

**\*NEW SECTION. Sec. 810.** *A new section is added to chapter 47.08 RCW to read as follows:*

*This chapter does not apply to the 2001-03 transportation budget appropriating new transportation revenue.*

*\*Sec. 810 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 811.** 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. 812.** 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, only if Engrossed Substitute House Bill No. 2969 becomes law.

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 DEPARTMENT OF REVENUE ..... 864  
 DEPARTMENT OF TRANSPORTATION  
 IMPROVEMENTS--PROGRAM I--ENVIRONMENTAL RETROFIT IMPROVEMENT ..... 882  
 IMPROVEMENTS--PROGRAM I--HOV PROJECTS ..... 879  
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 STATE REVENUES FOR DISTRIBUTION ..... 891  
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 TRANSPORTATION EFFICIENCIES ..... 864  
 TRANSPORTATION IMPROVEMENT BOARD ..... 888  
 CAPITAL ..... 888

Passed the Senate March 14, 2002.

Passed the House March 14, 2002.

Approved by the Governor March 27, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2002.

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

"I am returning herewith, without my approval as to sections 203(5), Page 4 (Department of Transportation - Public Transportation - Program V); 302(45), Page 20 (Department of Transportation - Improvements - Program I - Mobility and Economic Initiative Improvement Projects); 304(2), Page 23, Line 1 (Department of Transportation - Improvements - Program I - Safety Improvement Projects); 305(2), Page 24, Lines 22 through 24 (Department of Transportation - Improvements - Program I - Environmental Retrofit Improvement Projects); 810, Page 38 (new section added to chapter 47.08 RCW), Engrossed Substitute Senate Bill No. 6347 entitled:

"AN ACT Relating to transportation funding and appropriations;"

Engrossed Substitute Senate Bill No. 6347 is the list of transportation projects that will be funded if voters approve the statewide transportation revenue referendum in November of this year. I strongly support this bill, but for a few portions that were vetoed.

Section 203(5) of the bill would have required Everett Transit and Community Transit to develop an interlocal agreement to serve paratransit and special needs transit as



a condition to receiving their share of new state transit funding. Senior Services of Snohomish County is under contract with Community Transit to provide these services to county residents through 2006. While I support local efforts to address coordination between these transit systems, the provisions of this subsection would have the effect of either eliminating new state transit funding for Everett Transit and Community Transit, or negatively impacting the financial status of Senior Services of Snohomish County.

Section 302(45) of the bill provides \$350,000 of the Motor Vehicle Account – State appropriation solely for the middle Washington corridor study. The proviso stipulates that the Department of Transportation, in consultation with local officials and residents of the area, shall conduct a study to determine the feasibility of creating a new north-south corridor as an alternative to Interstate 5 and Interstate 405 from the Canadian border to Lewis County. The department would have been required to report to the legislature no later than December 31, 2002 on the feasibility of financing and constructing such a corridor. I have vetoed this subsection because the revenues that would provide the funding for the study would not be available until after the specified reporting date. Additionally, funding was provided to the Legislative Transportation Committee in the supplemental transportation budget (ESHB 2451) to convene a working group to study the same project.

Section 304(2) provides \$9,504,000 of the Motor Vehicle Account – State appropriation for a safety improvement project on State Route 7. The proviso was inadvertently written to state that the entire appropriation was provided for preconstruction activities alone, instead of construction. In order to restore legislative intent for this project, I have vetoed the preconstruction item from the section.

Section 305(2) provides \$1,250,000 of the Motor Vehicle Account – State appropriation solely for reconstruction of a bridge at Skobob Creek on State Route 106 in Mason County. The proviso stipulates that the project is subject to review and approval by the department, but that the Hood Canal Salmon Enhancement Group shall manage the project. This provision of the bill would set an undesirable precedent by allowing a local group to manage a project on the Department of Transportation's right of way. For this reason, I have vetoed this item.

Section 810 would have added a new section to chapter 47.08 RCW exempting this bill from that chapter. RCW 47.08.010 provides that funds allocated for the construction or improvement of state highways shall be under the sole charge and direct control of the Department of Transportation. However, funding for highway construction and improvements in this act is appropriated specifically to the department, making the exemption unnecessary.

For these reasons, I have vetoed sections 203(5), Page 4 (Department of Transportation – Public Transportation – Program V); 302(45), Page 20 (Department of Transportation – Improvements – Program I – Mobility and Economic Initiative Improvement Projects); 304(2), Page 23, Line 1 (Department of Transportation – Improvements – Program I – Safety Improvement Projects); 305(2), Page 24, Lines 22 through 24 (Department of Transportation – Improvements – Program I – Environmental Retrofit Improvement Projects); 810, Page 38 (new section added to chapter 47.08 RCW) of Engrossed Substitute Senate Bill No. 6347.

With the exception of the foregoing sections, Engrossed Substitute Senate Bill No. 6347 is approved."

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## CHAPTER 202

[Engrossed Substitute House Bill 2969]  
TRANSPORTATION FUNDING

AN ACT Relating to transportation improvement and financing; amending RCW 44.40.010, 44.40.013, 44.40.015, 44.40.020, 44.40.025, 44.40.030, 44.40.040, 44.40.070, 44.40.090, 44.40.100, 44.40.140, 44.40.150, 46.16.070, 46.68.035, 82.38.030, 82.38.035, 82.38.045, 82.38.047, 82.38.075, 46.09.170, 46.10.170, 79A.25.070, 82.08.020, 82.12.020, 82.12.045, and 39.42.060; reenacting and amending RCW 43.84.092, 82.36.025, 46.68.090, and 46.68.110; adding new sections to chapter 44.40 RCW; adding a new section to chapter 46.04 RCW; adding a new section to chapter 46.68 RCW; adding a new section to chapter 47.26 RCW; adding a new section to chapter 43.135 RCW; adding a

new section to chapter 82.32 RCW; adding new sections to chapter 47.10 RCW; creating new sections; providing effective dates; providing a contingent effective date; providing for submission of certain sections of this act to a vote of the people; and declaring an emergency.

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

**PART I - ACCOUNTABILITY FOR TRANSPORTATION  
PROJECTS AND PROGRAMS**

**NEW SECTION. Sec. 101.** It is essential that the legislature improve the accountability and efficiency of the department of transportation. Taxpayers must know that their tax dollars are being well spent to deliver critically needed transportation projects. To accomplish this, a transportation accountability process must be established to provide oversight on transportation projects. The legislative transportation accountability committee will replace and assume the duties and responsibilities of the legislative transportation committee and, additionally, in conjunction with an independent transportation accountability board, report to the public on how tax dollars are spent on projects funded by new transportation taxes under this act.

**NEW SECTION. Sec. 102.** In addition to the legislative transportation accountability committee's other responsibilities under this chapter, the committee has the following responsibilities:

- (1) Direct the department of transportation to submit a transportation accountability audit report as required under section 103 of this act;
- (2) Report annually to the governor and the legislature on the department's progress on each project as further defined in section 103 of this act;
- (3) When necessary, make policy recommendations for improving efficiencies, savings, or improvements in the department's project management, accountability measures, or project delivery mechanisms;
- (4) Recommend any leading edge transportation project delivery strategies, oversight, accountability, or efficiency measures; and
- (5) Appoint members of the transportation accountability board as nominated by the governor pursuant to section 106 of this act.

**NEW SECTION. Sec. 103.** The department of transportation shall prepare and submit to the transportation commission once each quarter a comprehensive audit report on each transportation project funded by this act. The audit report shall be known as the "transportation accountability audit." For the purposes of this act, the audit must include the following elements:

- (1) Project status and any scope changes;
- (2) Estimated completion date and cost, noting any changes from past estimates;
- (3) Actual project expenditures as compared with projected expenditures;
- (4) Any changes in financing for each project;
- (5) Claim or change orders that result in greater than a five-percent cumulative increase in project cost, or greater than sixty days of delay;
- (6) Status of any required permits;

- (7) Mitigation efforts to relieve both traffic and environmental impacts;
- (8) Evaluation of work force effectiveness, including both state employees and contractors;
- (9) Outlook for the upcoming year, including projected accomplishments and challenges;
- (10) Copies of any accountability reports filed with the federal highway administration; and
- (11) Any other useful information the committee or commission requests.

**NEW SECTION. Sec. 104.** The transportation commission must review the proposed transportation accountability audit submitted by the department. After reviewing the information contained therein, the commission may request additional information or data, or ask for clarifications. The commission is prohibited from changing any of the data contained in the audit report.

After conducting its review, the commission must forward the transportation accountability audit to the legislative transportation accountability committee and the transportation accountability board.

**NEW SECTION. Sec. 105.** (1) Upon completion of its review under section 104 of this act, the transportation commission shall forward the transportation accountability audit to the transportation accountability board and the legislative transportation accountability committee. The transportation accountability board will accept or reject the report.

(a) In determining whether to accept or reject the report, the board:

(i) Will analyze, investigate, and evaluate the data contained in the audit report;

(ii) May, when authorized by the legislative transportation accountability committee, contract out for planners, consultants, and other technical personnel to assist in the audit review process; and

(iii) May request additional information or data from the department of transportation.

(b) As part of the evaluation process, the board may make recommendations to the legislative transportation accountability committee for efficiencies, savings, or improvements in the department's project management, accountability measures, or project delivery mechanisms.

(2) After reviewing the report, the board must forward the transportation accountability audit and recommendations to the office of financial management and the legislative transportation accountability committee.

(3) The legislative transportation accountability committee must make the transportation accountability audit report available to the public.

(4) In addition to its regular staff, the legislative transportation accountability committee is authorized to contract out for planners, consultants, and other technical personnel to advise it, or the board at its request, in the performance of its duties, assist in the review of the transportation accountability audit, and to assist in other audits initiated by the committee.

(5) Staff support to the board must be provided by the legislative transportation accountability committee, which shall provide professional support for the duties, functions, responsibilities, and activities of the board, including but not limited to information technology systems; data collection, processing, analysis, and reporting; project management; and office space, equipment, and secretarial support. The legislative evaluation and accountability program will provide data and information technology support consistent with the support currently supplied to existing legislative committees.

**NEW SECTION. Sec. 106.** (1) The transportation accountability board is created.

(2) The board will consist of no fewer than five and no more than nine members nominated by the governor, and selected by the legislative transportation accountability committee, for terms of four years, except that at least half the members initially appointed will be appointed for terms of two years. The members of the board must be chosen so the board will have experience and expertise relating to major civil engineering and construction works and facilities to include: (a) Design, estimating, contract packaging, and procurement; (b) construction means and methods and construction management and administration; (c) project finance, accounting, controls, and reporting; (d) procedures for obtaining permits and for assuring regulatory compliance; (e) dispute resolution; (f) construction work force training and safety; (g) general public administration; and (h) experience crafting and implementing environmental mitigation plans.

(3) The legislative transportation accountability committee may not remove members from the board before the expiration of their terms unless for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office by the Thurston county superior court, upon petition and show cause proceedings brought for that purpose in that court and directed to the board member in question.

(4) No member may be appointed for more than three consecutive terms.

**NEW SECTION. Sec. 107.** (1) The board shall meet periodically. It may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members. The board shall be compensated from the general appropriation for the legislative transportation accountability committee and in accordance with RCW 43.03.250.

(2) Each member of the board will be compensated in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chairman. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chairman may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

**NEW SECTION. Sec. 108.** Sections 101 through 107 of this act are each added to chapter 44.40 RCW.

**Sec. 109.** RCW 44.40.010 and 1999 sp.s. c 1 s 616 are each amended to read as follows:

The joint fact-finding committee on highways, streets, and bridges originally created by chapter 111, Laws of 1947, recreated and renamed the joint committee on highways by chapter 3, Laws of 1963 extraordinary session, recreated and renamed the legislative transportation committee by chapter 87, Laws of 1980, is hereby recreated and renamed the legislative transportation accountability committee. The renaming of said committee shall not affect any powers invested in it or its duties imposed upon it by any other statute. All appropriations made to the committee under its former name shall continue to be available to said committee as renamed, the legislative transportation accountability committee. The committee shall consist of twelve senators to be appointed by the president of the senate and twelve members of the house of representatives to be appointed by the speaker thereof. Not more than six members from each house may be from the same political party. A list of appointees shall be submitted before the close of each regular legislative session during an odd-numbered year or any successive special session convened by the governor or the legislature prior to the close of such regular session or successive special session(s) for confirmation of senate members, by the senate, and house members, by the house. Vacancies occurring shall be filled by the appointing authority. All vacancies must be filled from the same political party and from the same house as the member whose seat was vacated.

~~((On May 27, 1999, the president of the senate shall appoint an additional senate member as provided by the 1999 amendment of this section. With the appointment of the additional member, the terms of officers elected before May 27, 1999, are terminated, and the committee shall hold a new election of officers.))~~

The committee shall adopt rules and procedures for its orderly operation.

**Sec. 110.** RCW 44.40.013 and 2001 c 259 s 5 are each amended to read as follows:

The administration of the legislative transportation accountability committee is subject to RCW 44.04.260.

**Sec. 111.** RCW 44.40.015 and 2001 c 259 s 6 are each amended to read as follows:

The members of the legislative transportation accountability committee shall form an executive committee consisting of two members from each of the four major political caucuses, which will include the chair and vice-chair of the legislative transportation accountability committee. There will be four alternates to the executive committee, one from each of the four major political caucuses.

Each alternate may represent a member from the same political caucus from which they were chosen when that member is absent, and have voting privileges during that absence.

Subject to RCW 44.04.260, the executive committee is responsible for performing all general administrative and personnel duties assigned to it in the rules and procedures adopted by the committee, determining the number of legislative transportation accountability committee staff, and other duties delegated to it by the committee. Except when those responsibilities are assumed by the legislative transportation accountability committee, and subject to RCW 44.04.260, the executive committee is responsible for adopting interim work plans and meeting schedules, approving all contracts signed on behalf of the committee, and setting policies for legislative transportation accountability committee staff utilization.

**Sec. 112.** RCW 44.40.020 and 1996 c 129 s 9 are each amended to read as follows:

(1) The committee is authorized and directed to continue its studies and for that purpose shall have the powers set forth in chapter 111, Laws of 1947. The committee is further authorized to make studies related to bills assigned to the house and senate transportation committees and such other studies as provided by law. The executive committee of the committee may assign responsibility for all or part of the conduct of studies to the house and/or senate transportation committees.

(2) The committee may review and approve franchise agreements entered into by the department of transportation under RCW ((43.51.113)) 79A.05.125.

**Sec. 113.** RCW 44.40.025 and 1996 c 288 s 49 are each amended to read as follows:

In addition to the powers and duties authorized in RCW 44.40.020, the committee and the standing committees on transportation of the house and senate shall, in coordination with the joint legislative audit and review committee, the legislative evaluation and accountability program committee, and the ways and means committees of the senate and house of representatives, ascertain, study, and/or analyze all available facts and matters relating or pertaining to sources of revenue, appropriations, expenditures, and financial condition of the motor vehicle fund and accounts thereof, the highway safety fund, and all other funds or accounts related to transportation programs of the state.

The joint legislative audit and review committee, the legislative evaluation and accountability program committee, and the ways and means committees of the senate and house of representatives shall coordinate their activities with the legislative transportation accountability committee in carrying out the committees' powers and duties under chapter 43.88 RCW in matters relating to the transportation programs of the state.

**Sec. 114.** RCW 44.40.030 and 1982 c 227 s 17 are each amended to read as follows:

In addition to the powers and duties heretofore conferred upon it, the legislative transportation accountability committee may participate in: (1) The activities of committees of the council of state governments concerned with transportation activities; (2) activities of the national committee on uniform traffic laws and ordinances; (3) any interstate reciprocity or proration meetings designated by the department of licensing; and (4) such other organizations as it deems necessary and appropriate.

**Sec. 115.** RCW 44.40.040 and 2001 c 259 s 7 are each amended to read as follows:

The members of the legislative transportation accountability committee and the house and senate transportation committees shall receive allowances while attending meetings of the committees or subcommittees and while engaged in other authorized business of the committees as provided in RCW 44.04.120. Subject to RCW 44.04.260, all expenses incurred by the committee, and the house and senate transportation committees, including salaries of employees of the legislative transportation accountability committee, shall be paid upon voucher forms as provided by the office of financial management and signed by the chairman or vice chairman or authorized designee of the chairman of the committee, and the authority of said chairman or vice chairman to sign vouchers shall continue until their successors are selected. Vouchers may be drawn upon funds appropriated for the expenses of the committee.

**Sec. 116.** RCW 44.40.070 and 1998 c 245 s 87 are each amended to read as follows:

Prior to October 1st of each even-numbered year all state agencies whose major programs consist of transportation activities, including the department of transportation, the transportation improvement board, the Washington state patrol, the department of licensing, the traffic safety commission, the county road administration board, and the board of pilotage commissioners, shall adopt or revise, after consultation with the legislative transportation accountability committee, a comprehensive six-year program and financial plan for all transportation activities under each agency's jurisdiction.

The comprehensive six-year program and financial plan shall state the general objectives and needs of each agency's major transportation programs, including workload and performance estimates.

**Sec. 117.** RCW 44.40.090 and 2001 c 259 s 8 are each amended to read as follows:

Subject to RCW 44.04.260, powers and duties enumerated by this chapter shall be delegated to the senate and house transportation committees during periods when the legislative transportation accountability committee is not appointed.

**Sec. 118.** RCW 44.40.100 and 2001 c 259 s 9 are each amended to read as follows:

Subject to RCW 44.04.260, the legislative transportation accountability committee and the senate and house transportation committees may enter into contracts on behalf of the state to carry out the purposes of this chapter; and it or they may act for the state in the initiation of or participation in any multigovernmental program relative to transportation planning or programming; and it or they may enter into contracts to receive federal or other funds, grants, or gifts to carry out said purposes and to be used in preference to or in combination with state funds. When federal or other funds are received, they shall be deposited with the state treasurer and thereafter expended only upon approval by the committee or committees.

**Sec. 119.** RCW 44.40.140 and 1983 c 212 s 2 are each amended to read as follows:

Prior to the start of each regular legislative session in an odd-numbered year, the legislative transportation accountability committee shall review the policy of the state concerning fees imposed on nonpolluting fuels under RCW 82.38.075, and shall report its findings and recommendations for change, if any, to the legislature.

**Sec. 120.** RCW 44.40.150 and 1998 c 245 s 88 are each amended to read as follows:

(1) The legislative transportation accountability committee shall undertake a study and develop recommendations for legislative and executive consideration that will:

(a) Increase the efficiency and effectiveness of state transportation programs and reduce costs;

(b) Enhance the accountability and organizational soundness of all transportation modes;

(c) Encourage better communication between local jurisdictions and the department of transportation in developing engineering plans and subsequent construction projects;

(d) Encourage private sector support and financial participation in project development and construction of transportation projects;

(e) Develop long-range goals that reflect changing technology and state-of-the-art advancements in transportation;

(f) Explore alternatives for the establishment of an integrated and balanced multimodal statewide transportation system to meet the needs of the 21st century; and

(g) Explore ways to reduce the demand on the transportation system and more effectively use the existing system.

The committee may study other transportation needs and problems and make further recommendations.



(2) The office of financial management and the department of transportation shall provide staff support as required by the legislative transportation accountability committee in developing the recommendations. To the extent permitted by law, all agencies of the state shall cooperate fully with the legislative transportation accountability committee in carrying out its duties under this section.

(3) The legislative transportation accountability committee may receive and expend gifts, grants, and endowments from private sector sources to carry out the purpose of this section.

**PART II - LICENSE FEES**

NEW SECTION. **Sec. 201.** A new section is added to chapter 46.04 RCW to read as follows:

"Gross weight portion of the current combined licensing fees" means the amounts listed in RCW 46.16.070, Schedule A, less twenty-five dollars and seventy-five cents, and the amounts listed in Schedule B, less twenty-five dollars and seventy-five cents and less an additional ninety dollars if the requested gross weight is over forty thousand pounds.

**Sec. 202.** RCW 46.16.070 and 1994 c 262 s 8 are each amended to read as follows:

(1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to (~~the excise tax prescribed in chapter 82.44 RCW and~~) the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight (~~thereof pursuant to the provisions of~~) under chapter 46.44 RCW, the following licensing fees by such gross weight:

DECLARED GROSS WEIGHT	SCHEDULE A	SCHEDULE B
4,000 lbs. ....	\$ 37.00 .....	\$ 37.00
6,000 lbs. ....	\$ 44.00 .....	\$ 44.00
8,000 lbs. ....	\$ 55.00 .....	\$ 55.00
10,000 lbs. ....	\$ 62.00 .....	\$ 62.00
12,000 lbs. ....	\$ 72.00 .....	\$ 72.00
14,000 lbs. ....	\$ 82.00 .....	\$ 82.00
16,000 lbs. ....	\$ 92.00 .....	\$ 92.00
18,000 lbs. ....	\$ 137.00 .....	\$ 137.00
20,000 lbs. ....	\$ 152.00 .....	\$ 152.00
22,000 lbs. ....	\$ 164.00 .....	\$ 164.00
24,000 lbs. ....	\$ 177.00 .....	\$ 177.00
26,000 lbs. ....	\$ 187.00 .....	\$ 187.00
28,000 lbs. ....	\$ 220.00 .....	\$ 220.00
30,000 lbs. ....	\$ 253.00 .....	\$ 253.00
32,000 lbs. ....	\$ 304.00 .....	\$ 304.00
34,000 lbs. ....	\$ 323.00 .....	\$ 323.00
36,000 lbs. ....	\$ 350.00 .....	\$ 350.00
38,000 lbs. ....	\$ 384.00 .....	\$ 384.00
40,000 lbs. ....	\$ 439.00 .....	\$ 439.00

42,000 lbs. ....	\$ 456.00 .....	\$ 546.00
44,000 lbs. ....	\$ 466.00 .....	\$ 556.00
46,000 lbs. ....	\$ 501.00 .....	\$ 591.00
48,000 lbs. ....	\$ 522.00 .....	\$ 612.00
50,000 lbs. ....	\$ 566.00 .....	\$ 656.00
52,000 lbs. ....	\$ 595.00 .....	\$ 685.00
54,000 lbs. ....	\$ 642.00 .....	\$ 732.00
56,000 lbs. ....	\$ 677.00 .....	\$ 767.00
58,000 lbs. ....	\$ 704.00 .....	\$ 794.00
60,000 lbs. ....	\$ 750.00 .....	\$ 840.00
62,000 lbs. ....	\$ 804.00 .....	\$ 894.00
64,000 lbs. ....	\$ 822.00 .....	\$ 912.00
66,000 lbs. ....	\$ 915.00 .....	\$ 1,005.00
68,000 lbs. ....	\$ 954.00 .....	\$ 1,044.00
70,000 lbs. ....	\$ 1,027.00 .....	\$ 1,117.00
72,000 lbs. ....	\$ 1,098.00 .....	\$ 1,188.00
74,000 lbs. ....	\$ 1,193.00 .....	\$ 1,283.00
76,000 lbs. ....	\$ 1,289.00 .....	\$ 1,379.00
78,000 lbs. ....	\$ 1,407.00 .....	\$ 1,497.00
80,000 lbs. ....	\$ 1,518.00 .....	\$ 1,608.00
82,000 lbs. ....	\$ 1,623.00 .....	\$ 1,713.00
84,000 lbs. ....	\$ 1,728.00 .....	\$ 1,818.00
86,000 lbs. ....	\$ 1,833.00 .....	\$ 1,923.00
88,000 lbs. ....	\$ 1,938.00 .....	\$ 2,028.00
90,000 lbs. ....	\$ 2,043.00 .....	\$ 2,133.00
92,000 lbs. ....	\$ 2,148.00 .....	\$ 2,238.00
94,000 lbs. ....	\$ 2,253.00 .....	\$ 2,343.00
96,000 lbs. ....	\$ 2,358.00 .....	\$ 2,448.00
98,000 lbs. ....	\$ 2,463.00 .....	\$ 2,553.00
100,000 lbs. ....	\$ 2,568.00 .....	\$ 2,658.00
102,000 lbs. ....	\$ 2,673.00 .....	\$ 2,763.00
104,000 lbs. ....	\$ 2,778.00 .....	\$ 2,868.00
105,500 lbs. ....	\$ 2,883.00 .....	\$ 2,973.00

Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

(2) Every truck, motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle or unless the vehicle is used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, donkey engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such vehicle.

(3)(a) Beginning with all motor vehicle registrations that are due or become due on January 1, 2003, there will be paid and collected annually a fifteen percent surcharge on the gross weight portion of the combined licensing fees in effect

January 1, 2002, for vehicles with a licensed gross weight over ten thousand pounds.

(b) Beginning with all motor vehicle registrations that are due or become due on January 1, 2004, and thereafter, there will be paid and collected annually a thirty percent surcharge on the gross weight portion of the combined licensing fees in effect January 1, 2002, for vehicles with a licensed gross weight over ten thousand pounds.

(4) The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

~~((2))~~ (5) The proceeds from the fees collected under ~~((subsection (1) of))~~ this section shall be distributed in accordance with RCW 46.68.035.

**Sec. 203.** RCW 46.68.035 and 2000 2nd sp.s. c 4 s 8 are each amended to read as follows:

All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) The sum of two dollars for each vehicle shall be deposited into the multimodal transportation account, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(2) The proceeds from the surcharge collected under RCW 46.16.070(3) must be deposited into the motor vehicle account.

(3) The remainder shall be distributed as follows:

(a) 23.677 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 1.521 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund; and

(c) The remaining proceeds shall be deposited into the motor vehicle fund.

**NEW SECTION.** **Sec. 204.** A new section is added to chapter 46.68 RCW to read as follows:

The freight mobility account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for the purpose of roadway improvement projects to facilitate freight movement.

**Sec. 205.** RCW 43.84.092 and 2001 2nd sp.s. c 14 s 608, 2001 c 273 s 6, 2001 c 141 s 3, and 2001 c 80 s 5 are each reenacted and 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 oyster reserve land 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 fruit express account, 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 freight mobility account, 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.

### PART III - FUEL TAX

**Sec. 301.** RCW 82.36.025 and 1999 c 269 s 16 and 1999 c 94 s 29 are each reenacted and amended to read as follows:

(1) A motor vehicle fuel tax rate of twenty-three cents per gallon (~~shall apply~~) applies to the sale, distribution, or use of motor vehicle fuel.

(2) Beginning January 1, 2003, an additional and cumulative motor fuel tax rate of five cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

(3) Beginning January 1, 2004, an additional and cumulative motor vehicle fuel tax rate of four cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

**Sec. 302.** RCW 82.38.030 and 2001 c 270 s 6 are each amended to read as follows:

(1) There is hereby levied and imposed upon special fuel users a tax at the rate (~~computed in the manner provided in RCW 82.36.025 on each~~) of twenty-three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning January 1, 2003, an additional and cumulative tax rate of five cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users.

(3) Beginning January 1, 2004, an additional and cumulative special fuel tax rate of four cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users.

(4) The tax is imposed (~~by subsection (1) of this section is imposed~~) when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor

for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(h) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk transfer-terminal system.

~~((3))~~ (5) The tax imposed by this chapter, if required to be collected by the licensee, is held in trust by the licensee until paid to the department, and a licensee 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 is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax.

**Sec. 303.** RCW 46.68.090 and 1999 c 269 s 2 and 1999 c 94 s 6 are each reenacted and amended to read as follows:

(1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax

amount shall be distributed monthly by the state treasurer in ~~((the proportions set forth in (c) through (h)))~~ accordance with subsections (2), (3), and (4) of this ((subsection)) section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly~~((;))~~.

(2) All of the remaining net tax amount collected under RCW 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a) through (j) of this subsection.

~~((e))~~ (a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

~~((d))~~ (b) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

- (i) Accident experience;
- (ii) Fatal accident experience;
- (iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and
- (iv) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection ~~((f)(d))~~ (2)(b);

~~((e))~~ (c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

~~((f))~~ (d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

~~((g))~~ (e) For distribution to the urban arterial trust account in the motor vehicle fund an amount equal to 7.5597 percent;

~~((h))~~ (f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

~~((i))~~ (g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

~~((j))~~ (h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there shall be distributed from



time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

~~((k))~~ (i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

~~((h))~~ (j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

~~((2))~~ (3) 100 percent of the net tax amount collected under RCW 82.36.025(2) and 82.38.030(2) shall be distributed as follows:

(a) 4.3366 percent shall be distributed to cities and towns in accordance with RCW 46.68.110(6).

(b) 4.3366 percent shall be distributed to counties in accordance with RCW 46.68.120.

(c) 91.3268 percent shall be distributed to the motor vehicle account.

(4) 100 percent of the net tax amount collected under RCW 82.36.025(3) and 82.38.030(3) shall be distributed to the motor vehicle account.

(5) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels.

**Sec. 304.** RCW 46.68.110 and 1999 c 269 s 3 and 1999 c 94 s 9 are each reenacted and amended to read as follows:

Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090~~((1)(i))~~ shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090 (2)(g) and (3) shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090 (2)(g) and (3) shall be deducted monthly, as such funds accrue,

and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090(2)(g) shall be deducted monthly, as such funds accrue, to be deposited in the urban arterial trust account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program as of July 1st of each odd-numbered year thereafter, shall be provided within sixty days to the treasurer and distributed in the manner prescribed in subsection (5) of this section;

(4) After making the deductions under subsections (1) through (3) of this section and RCW 35.76.050, 31.86 percent of the fuel tax distributed to the cities and towns in RCW 46.68.090((1)(i)) (2)(g) shall be allocated monthly as the funds accrue to the incorporated cities and towns ((in the manner set forth in subsection (5) of this section and subject to deductions in subsections (1), (2), and (3) of this section, subject to RCW 35.76.050, to)) of the state ratably on the basis of the population as last determined by the office of financial management. Funds shall be used exclusively for: The construction, improvement, chip sealing, seal-coating, and repair for arterial highways and city streets as those terms are defined in RCW 46.04.030 and 46.04.120; the maintenance of arterial highways and city streets for those cities with a population of less than fifteen thousand; or the payment of any municipal indebtedness which may be incurred in the construction, improvement, chip sealing, seal-coating, and repair of arterial highways and city streets; ((and))

(5) The ((balance)) remaining ((to the credit of incorporated cities and towns after such deduction)) funds not distributed under subsection (4) of this section shall be apportioned monthly as such funds accrue among the ((several)) incorporated cities and towns within the state ratably on the basis of the population last determined by the office of financial management; and

(6) After making the deductions under subsections (1) and (2) of this section and RCW 35.76.050, one hundred percent of the funds distributed to the cities and towns in RCW 46.68.090(3)(a) shall be allocated monthly as such funds accrue to the incorporated cities and towns of the state with populations over ten thousand persons, ratably on the basis of population as last determined by the office of financial management.

**NEW SECTION. Sec. 305.** A new section is added to chapter 47.26 RCW to read as follows:

As part of the matching funds requirements under RCW 47.26.270, the transportation improvement board shall require a city or town receiving funds under RCW 46.68.110(6) to use a portion of these funds, as determined by the board by rule, for the purpose of matching a portion of the corridor grant money allocated to the city or town by the board under this chapter.

**Sec. 306.** RCW 82.38.035 and 2001 c 270 s 7 are each amended to read as follows:

(1) A licensed supplier shall remit tax on special fuel to the department as provided in RCW 82.38.030(~~((2))~~) (4)(a). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall remit the tax.

(2) A refiner shall remit tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(~~((2))~~) (4)(b).

(3) An importer shall remit tax to the department on special fuel imported into this state as provided in RCW 82.38.030(~~((2))~~) (4)(c).

(4) A blender shall remit tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(~~((2))~~) (4)(e).

(5) A dyed special fuel user shall remit tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(~~((2))~~) (4)(f).

**Sec. 307.** RCW 82.38.045 and 1998 c 176 s 54 are each amended to read as follows:

A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030(~~((1))~~) if, at the time of removal:

(1) The position holder with respect to the special fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under chapter 26, C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false.

**Sec. 308.** RCW 82.38.047 and 1998 c 176 s 55 are each amended to read as follows:

A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030(~~((1))~~) if, in connection with the removal of special fuel that is not dyed or marked in accordance with internal revenue service requirements, the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating that the special fuel is dyed or marked in accordance with internal revenue service requirements.

**Sec. 309.** RCW 82.38.075 and 1983 c 212 s 1 are each amended to read as follows:

In order to encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 shall be imposed upon the use of natural gas as defined in this chapter or on liquified petroleum gas, commonly called propane, which is used in any motor vehicle, as defined in RCW 46.04.320, which shall be based upon the following schedule as adjusted by the formula set out below:

VEHICLE TONNAGE (GVW)	FEE
0 - 6,000	\$ 45
6,001 - 10,000	\$ 45
10,001 - 18,000	\$ 80
18,001 - 28,000	\$110
28,001 - 36,000	\$150
36,001 and above	\$250

To determine the actual annual license fee imposed by this section for a registration year, the appropriate dollar amount set out in the above schedule shall be multiplied by the ((~~motor vehicle~~) special fuel tax rate in cents per gallon as established by RCW ((~~82.36.025~~) 82.38.030 effective on July 1st of the preceding calendar year and the product thereof shall be divided by 12 cents.

The department of licensing, in addition to the foregoing fee, shall charge a further fee of five dollars as a handling charge for each license issued.

The director of licensing shall be authorized to prorate the vehicle tonnage fee so that the annual license required by this section will correspond with the staggered vehicle licensing system.

A decal or other identifying device issued upon payment of these annual fees shall be displayed as prescribed by the department as authority to purchase this fuel.

Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device as provided in this section.

Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

Any person selling or dispensing natural gas or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter.

**Sec. 310.** RCW 46.09.170 and 1995 c 166 s 9 are each amended to read as follows:

(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on the tax rate in effect January 1, ((1990)) 2001, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

(a) Forty percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for planning, maintenance, and management of ORV recreation facilities, nonhighway roads, and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than five percent may be expended for information programs under this chapter;

(ii) Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty-five percent may be expended for maintenance of nonhighway roads;

(iv) Not more than fifty percent may be expended for nonhighway road recreation facilities;

(v) Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (d)(i) of this subsection;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of nonhighway roads and recreation facilities;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the maintenance and management of ORV use areas and facilities; and

(d) Fifty-four and one-half percent, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110, shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV recreation facilities and nonhighway road recreation facilities; ORV user education and information; and ORV law enforcement programs. The expenditures in this subsection (1)(d) shall be calculated on the motor vehicle fuel tax in effect January 1, 1990, until this subsection (1)(d) is amended to reflect the findings of the recreational fuel use study provided in section 346, chapter 8, Laws of 2001 2nd sp. sess. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than twenty percent may be expended for ORV education, information, and law enforcement programs under this chapter;

(ii) Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty percent may be expended for nonhighway road recreation facilities.

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

**Sec. 311.** RCW 46.10.170 and 1994 c 262 s 4 are each amended to read as follows:

From time to time, but at least once each four years, the department shall determine the amount of moneys paid to it as motor vehicle fuel tax that is tax on snowmobile fuel. Such determination shall use one hundred thirty-five gallons as the average yearly fuel usage per snowmobile, the number of registered snowmobiles during the calendar year under determination, and the fuel tax rate in effect January 1, (~~(+1990)~~) 2001.

**Sec. 312.** RCW 79A.25.070 and 2000 c 11 s 73 are each amended to read as follows:

Upon expiration of the time limited by RCW 82.36.330 for claiming of refunds of tax on marine fuel, the state of Washington shall succeed to the right to such refunds. The director of licensing, after taking into account past and anticipated claims for refunds from and deposits to the marine fuel tax refund account and the costs of carrying out the provisions of RCW 79A.25.030, shall request the state treasurer to transfer monthly from the marine fuel tax refund account an amount equal to the proportion of the moneys in the account representing the motor vehicle fuel tax rate under RCW 82.36.025 in effect on January 1, (~~(+1990)~~) 2001, to the recreation resource account and the remainder to the motor vehicle fund.

#### PART IV - SALES AND USE TAXES

**Sec. 401.** RCW 82.08.020 and 2000 2nd sp.s. c 4 s 1 are each amended to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning April 1, 2003, there is levied and collected an additional tax of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) The revenue collected under subsection (3) of this section must be deposited into the multimodal transportation account under RCW 47.66.070.

(6) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

~~((4))~~ (7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

**Sec. 402.** RCW 82.12.020 and 1999 c 358 s 9 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer:

(a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); or (b) any canned software, regardless of the method of delivery, but excluding canned software that is either provided free of charge or is provided for temporary use in viewing information, or both.

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050(3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters.

(4) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rates in effect for the retail sales tax under RCW 82.08.020.

**Sec. 403.** RCW 82.12.045 and 1996 c 149 s 19 are each amended to read as follows:

(1) In the collection of the use tax on motor vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time an applicant applies for the registration of, and transfer of title to, the motor vehicle, except in the following instances:

(a) Where the applicant exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer;

(b) Where the application is for the renewal of registration;

(c) Where the applicant presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due; or

(d) Where the applicant presents satisfactory evidence showing that the retail sales tax or the use tax has been paid by ~~((him))~~ the applicant on the vehicle in question.

(2) The term "motor vehicle," as used in this section means and includes all motor vehicles, trailers and semitrailers used, or of a type designed primarily to be

used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads, facilities for human habitation, and vehicles carrying exempt licenses.

(3) It shall be the duty of every applicant for registration and transfer of certificate of title who is subject to payment of tax under this section to declare upon ~~((his))~~ the application the value of the vehicle for which application is made, which shall consist of the consideration paid or contracted to be paid therefor.

(4) Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of this section pay over and account to the state treasurer for all use tax revenue collected under this section, after first deducting as ~~((his))~~ a collection fee the sum of two dollars for each motor vehicle upon which the tax has been collected. All revenue received by the state treasurer under this section shall be credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

(5) Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he or she has reason to believe that such tax was not legally due and owing. No refund shall be allowed unless application therefor is received by the department of revenue within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050(3). Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180 and 82.32.190.

(6) The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to promulgate such rules as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer.

(7) The use tax revenue collected on the rate provided in RCW 82.08.020(3) will be deposited in the multimodal transportation account under RCW 47.66.070.

**NEW SECTION.** Sec. 404. A new section is added to chapter 43.135 RCW to read as follows:

A transfer from the general fund to the multimodal transportation account under section 405 of this act for taxes collected under chapters 82.08 and 82.12 RCW on new construction projects within the improvement program in RCW 47.05.030(2), does not require a corresponding lowering of the state expenditure limit to reflect this shift for purposes of RCW 43.135.035(4).



**NEW SECTION. Sec. 405.** A new section is added to chapter 82.32 RCW to read as follows:

(1) Effective for taxes collected in fiscal year 2006, the tax imposed and collected under chapters 82.08 and 82.12 RCW, less any credits allowed under chapter 82.14 RCW, on construction projects within the improvement program in RCW 47.05.030(2), except for those projects related to safety and environmental retrofit, shall be transferred from the general fund to the multimodal transportation account once each year as described by subsection (3) of this section.

(2) This transaction is exempt from the requirements in RCW 43.135.035(4).

(3) Government entities conducting construction projects within the improvement program in RCW 47.05.030(2), except for those projects related to safety and environmental retrofit, shall report to the department by August 1st of each year the amount of state sales or use tax attributable to the projects identified in this section from the previous fiscal year for purposes of transfer to the multimodal transportation account. The department shall notify the state treasurer of the amount of the transfer by September 30th of each year.

#### **PART V - BOND AUTHORIZATION**

**NEW SECTION. Sec. 501.** In order to provide funds necessary for the location, design, right of way, and construction of selected state and local highway improvements, there shall be issued and sold upon the request of the transportation commission a total of four billion five hundred million dollars of general obligation bonds of the state of Washington.

**NEW SECTION. Sec. 502.** Upon the request of the transportation commission, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 46.68.090 in accordance with chapter 39.42 RCW. Bonds authorized by this act shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued.

**NEW SECTION. Sec. 503.** The proceeds from the sale of bonds authorized by section 501 of this act shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in section 501 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

**NEW SECTION. Sec. 504.** Bonds issued under the authority of section 501 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the

principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of sections 501 through 506 of this act, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of section 501 of this act.

**NEW SECTION. Sec. 505.** Both principal and interest on the bonds issued for the purposes of section 501 of this act shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by section 501 of this act shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be, appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds.

**NEW SECTION. Sec. 506.** Bonds issued under the authority of section 501 of this act and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes.

**NEW SECTION. Sec. 507.** For the purpose of providing funds for the planning, design, construction, reconstruction, and other necessary costs for

transportation projects, including rail and passenger-only ferry projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

**NEW SECTION. Sec. 508.** The proceeds of the sale of the bonds authorized in section 507 of this act must be deposited in the multimodal transportation account and must be used exclusively for the purposes specified in section 507 of this act and for the payment of expenses incurred in the issuance and sale of the bonds.

**NEW SECTION. Sec. 509.** (1) The nondebt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in section 507 of this act.

(2)(a) The state finance committee must, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in section 507 of this act.

(b) On or before the date on which any interest or principal and interest is due, the state treasurer shall transfer from the multimodal transportation account for deposit into the nondebt-limit reimbursable bond retirement account the amount computed in (a) of this subsection for bonds issued for the purposes of section 507 of this act.

(3) If the multimodal transportation account has insufficient revenues to pay the principal and interest computed in subsection (2)(a) of this section, then the debt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in section 507 of this act from any additional means provided by the legislature.

(4) If at any time the multimodal transportation account has insufficient revenues to repay the bonds, the legislature may provide additional means for the payment of the bonds.

**NEW SECTION. Sec. 510.** (1) Bonds issued under section 507 of this act must state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal and interest, and must contain an unconditional promise to pay the principal and interest as it becomes due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

**NEW SECTION. Sec. 511.** The legislature may provide additional means for raising moneys for the payment of the principal and interest on the bonds

authorized in section 507 of this act, and sections 509 and 510 of this act are not deemed to provide an exclusive method for their payment.

**NEW SECTION. Sec. 512.** The bonds authorized in section 507 of this act are a legal investment for all state funds or funds under state control and for all funds of any other public body.

**Sec. 513.** RCW 39.42.060 and 2001 2nd sp.s. c 9 s 18 are each amended to read as follows:

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in section 1(c) of Article VIII of the Washington state Constitution for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;
- (7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;
- (8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition

of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness;

(9) Indebtedness incurred for the purposes identified in RCW 43.99N.020;

(10) Indebtedness incurred for the purposes of the school district bond guaranty established by chapter 39.98 RCW;

(11) Indebtedness incurred for the purposes of replacing the waterproof membrane over the east plaza garage and revising related landscaping construction pursuant to RCW 43.99Q.070; ~~((and))~~

(12) Indebtedness incurred for the purposes of the state legislative building rehabilitation, to the extent that principal and interest payments of such indebtedness are paid from the capitol building construction account pursuant to RCW 43.99Q.140(2)(b); and

(13) Indebtedness incurred for the purposes of financing projects under section 507 of this act.

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee.

NEW SECTION. Sec. 514. Sections 501 through 512 of this act are each added to chapter 47.10 RCW.

#### **PART VI - REFERENDUM**

NEW SECTION. Sec. 601. (1) The secretary of state shall submit this act, except for sections 102 through 120 of this act, to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation.

(2) If the people ratify this act as specified under subsection (1) of this section, revenues generated shall be spent as detailed in Senate Bill No. 6347, as enacted by the legislature.

(3) Pursuant to RCW 29.79.035, the statement of subject on the ballot title shall read: "The legislature has passed House Bill No. 2969, financing transportation improvements through transportation fees and taxes." The concise description on the ballot title shall read: "This bill would improve highway capacity, public transportation, passenger and freight rail, and transportation financing accountability through increased weight fees on trucks and large vehicles, fuel excise taxes, and sales taxes on vehicles."

NEW SECTION. Sec. 602. If this act is not ratified by the voters by November 15, 2002, this act is null and void in its entirety, including sections 102 through 120 of this act.

NEW SECTION. **Sec. 603.** Section 601 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.

#### **PART VII - MISCELLANEOUS**

NEW SECTION. **Sec. 701.** 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. 702.** Part headings used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 703.** If this act is ratified by the voters as specified in section 601 of this act, this act, except sections 401, 402, and 601 of this act, takes effect December 30, 2002.

NEW SECTION. **Sec. 704.** This act is null and void if a transportation expenditure bill based on the revenue provided in this act does not become law by December 31, 2002.

NEW SECTION. **Sec. 705.** Sections 401 and 402 of this act take effect April 1, 2003.

Passed the House March 14, 2002.

Passed the Senate March 14, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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### **CHAPTER 203**

[Engrossed Substitute Senate Bill 6008]

#### **COMMUTE TRIP REDUCTION INCENTIVES**

AN ACT Relating to commute trip reduction incentives; adding a new section to chapter 70.94 RCW; adding a new chapter to Title 82 RCW; creating new sections; repealing RCW 82.04.4453, 82.04.4454, 82.16.048, and 82.16.049; prescribing penalties; providing an effective date; and providing expiration dates.

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

NEW SECTION. **Sec. 1.** The definitions in this section apply throughout this chapter and section 8 of this act unless the context clearly requires otherwise.

(1) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(2) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Ride sharing" means the same as "commuter ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries.

(5) "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

**NEW SECTION. Sec. 2.** (1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before June 30, 2012, are allowed a credit against taxes payable under chapter 82.04 or 82.16 RCW for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per employee per year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before June 30, 2012, are allowed a credit against taxes payable under chapter 82.04 or 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per year. A person may not take a credit under this section for amounts claimed for credit by other persons.

(3) The credit under this section is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. The credit may not exceed the amount of tax that would otherwise be due under chapters 82.04 or 82.16 RCW.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

**NEW SECTION. Sec. 3.** (1) Application for tax credit under section 2 of this act may only be made in the form and manner prescribed in rules adopted by the department.

(2) The credit under this section must be taken against taxes due for the same calendar year in which the amounts for which credit is claimed were paid to or on behalf of employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting and must be claimed by the due date of the last tax return for the calendar year in which the payment is made.

(3) Any person who knowingly makes a false statement of a material fact in the application for a credit under section 2 of this act is guilty of a gross misdemeanor.

**NEW SECTION. Sec. 4.** (1) The department shall keep a running total of all credits granted under section 2 of this act and all grants provided under section 8

of this act during each calendar year. The department shall disallow any credits that would cause the tabulation for credits and grants in any legislative biennium, or portion thereof, to exceed the following levels: 2001-2003 - two million dollars; 2003-2005 - three million dollars; 2005-2007 - five million dollars; 2007-2009 - eight million dollars; 2009-2011 - eight million dollars; 2012 - four million dollars.

(2) No person is eligible for tax credits under section 2 of this act in excess of one hundred thousand dollars in any calendar year.

(3) No person is eligible for tax credits under section 2 of this act in excess of the amount of tax that would otherwise be due under chapter 82.04 or 82.16 RCW.

(4) No portion of an application for credit disallowed under this section may be carried back or carried forward.

(5) No person is eligible for both grants provided under section 8 of this act and tax credits under section 2 of this act within the same calendar year.

**NEW SECTION. Sec. 5.** (1) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken under section 2 of this act during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(2) On the 1st of April, July, October, and January of each year, the state treasurer based upon information provided by the department shall deposit to the general fund a sum equal to the dollar amount of the credit provided under section 2 of this act from the multimodal transportation account.

**NEW SECTION. Sec. 6.** The commute trip reduction task force shall determine the effectiveness of the tax credit under section 2 of this act as part of its ongoing evaluation of the commute trip reduction law and report to the legislative transportation committee and to the fiscal committees of the house of representatives and the senate. The report must include information on the amount of tax credits claimed to date and recommendations on future funding for the tax credit program. The report must be incorporated into the recommendations required in RCW 70.94.537(5).

**NEW SECTION. Sec. 7.** This chapter expires June 30, 2012.

**NEW SECTION. Sec. 8.** A new section is added to chapter 70.94 RCW to read as follows:

(1) The department of transportation shall administer a grant program for public agencies, nonprofit organizations, developers, and property managers who provide financial incentives for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, before June 30, 2012, to their own or other employees.

(2) Public agencies, nonprofit organizations, developers, and property managers are not eligible within the same calendar year for grants provided under this section and credits under section 2 of this act.



(3) The amount of the grant is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year.

(4) No public agency, nonprofit organization, developer, or property manager is eligible for grants under this section in excess of one hundred thousand dollars in any calendar year.

(5) The department of transportation shall report to the department of revenue by the 15th day of each month the aggregate monetary amount of grants provided under this section in the prior month and the identity of the recipients of those grants.

(6) The total of credits granted under section 2 of this act and grants provided under this section may not exceed two million dollars between the years 2001 and 2003; three million dollars between 2003 and 2005; five million dollars between 2005 and 2007; eight million dollars between 2007 and 2009; eight million dollars between 2009 and 2011; and four million dollars in 2012. The department of revenue shall notify the department of transportation when this limitation has been reached.

(7) The source of funds for this grant program is the multimodal transportation account.

(8) This section expires June 30, 2012.

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

(1) RCW 82.04.4453 (Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature) and 1999 c 402 s 1, 1996 c 128 s 1, & 1994 c 270 s 2;

(2) RCW 82.04.4454 (Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling) and 1999 c 402 s 3, 1996 c 128 s 2, & 1994 c 270 s 3;

(3) RCW 82.16.048 (Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Penalty—Report to legislature) and 1999 c 402 s 2, 1996 c 128 s 3, & 1994 c 270 s 4; and

(4) RCW 82.16.049 (Credit—Ride-sharing, public transportation, or nonmotorized commuting incentives—Ceiling) and 1999 c 402 s 4, 1996 c 128 s 4, & 1994 c 270 s 5.

**NEW SECTION.** **Sec. 10.** Sections I through 7 of this act constitute a new chapter in Title 82 RCW.

**NEW SECTION.** **Sec. 11.** The code reviser shall place cross-reference sections to chapter 82.—RCW (sections 1 through 7 of this act) in chapters 82.04 and 82.16 RCW.

**NEW SECTION.** **Sec. 12.** This act takes effect January 1, 2003.

**NEW SECTION.** **Sec. 13.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by legislative

appropriation to the multimodal transportation account by December 31, 2002, this act is null and void.

Passed the Senate March 13, 2002.

Passed the House March 14, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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**CHAPTER 204**

[Substitute House Bill 2807]

**HIGHER EDUCATION—SCHOLARSHIPS**

AN ACT Relating to higher education scholarships; reenacting and amending RCW 43.79A.040; adding a new chapter to Title 28B RCW; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature intends to strengthen the link between postsecondary education and K-12 education by creating the Washington promise scholarship program for academically successful high school graduates from low and middle-income families. The legislature finds that, increasingly, an individual’s economic viability is contingent on postsecondary educational opportunities, yet the state’s full financial obligation is eliminated after the twelfth grade. Students who work hard in kindergarten through twelfth grade and successfully complete high school with high academic marks may not have the financial ability to attend college because they cannot obtain financial aid or the financial aid is insufficient.

**NEW SECTION. Sec. 2.** The higher education coordinating board shall design the Washington promise scholarship program based on the following parameters:

(1) Scholarships shall be awarded to students graduating from public and approved private high schools under chapter 28A.195 RCW and students participating in home-based instruction as provided in chapter 28A.200 RCW who meet both an academic and a financial eligibility criteria.

(a) Academic eligibility criteria shall be defined as follows:

(i) Beginning with the graduating class of 2002, students graduating from public and approved private high schools under chapter 28A.195 RCW must be in the top fifteen percent of their graduating class, as identified by each respective high school at the completion of the first term of the student’s senior year; or

(ii) Students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, and students participating in home-based instruction as provided in chapter 28A.200 RCW must equal or exceed a cumulative scholastic assessment test I score of twelve hundred on their first attempt or must equal or exceed a composite American college test score of twenty-seven on their first attempt.

(b) To meet the financial eligibility criteria, a student's family income shall not exceed one hundred thirty-five percent of the state median family income adjusted for family size, as determined by the higher education coordinating board for each graduating class. Students not meeting the eligibility requirements for the first year of scholarship benefits may reapply for the second year of benefits, but must still meet the income standard set by the board for the student's graduating class.

(2) Promise scholarships are not intended to supplant any grant, scholarship, or tax program related to postsecondary education. If the board finds that promise scholarships supplant or reduce any grant, scholarship, or tax program for categories of students, then the board shall adjust the financial eligibility criteria or the amount of scholarship to the level necessary to avoid supplanting.

(3) Within available funds, each qualifying student shall receive two consecutive annual awards, the value of each not to exceed the full-time annual resident tuition rates charged by Washington's community colleges. The higher education coordinating board shall award scholarships to as many students as possible from among those qualifying under this section.

(4) By October 15th of each year, the board shall determine the award amount of the scholarships, after taking into consideration the availability of funds.

(5) The scholarships may only be used for undergraduate coursework at accredited institutions of higher education in the state of Washington.

(6) The scholarships may be used for undergraduate coursework at Oregon institutions of higher education that are part of the border county higher education opportunity project in RCW 28B.80.806 when those institutions offer programs not available at accredited institutions of higher education in Washington state.

(7) The scholarships may be used for college-related expenses, including but not limited to, tuition, room and board, books, and materials.

(8) The scholarships may not be awarded to any student who is pursuing a degree in theology.

(9) The higher education coordinating board may establish satisfactory progress standards for the continued receipt of the promise scholarship.

(10) The higher education coordinating board shall establish the time frame within which the student must use the scholarship.

**NEW SECTION. Sec. 3.** The higher education coordinating board, with the assistance of the office of the superintendent of public instruction, shall implement and administer the Washington promise scholarship program described in section 2 of this act as follows:

(1) The first scholarships shall be awarded to eligible students enrolling in postsecondary education in the 2002-03 academic year.

(2) The office of the superintendent of public instruction shall provide information to the higher education coordinating board that is necessary for implementation of the program. The higher education coordinating board and the office of the superintendent of public instruction shall jointly establish a timeline and procedures necessary for accurate and timely data reporting.

(a) For students meeting the academic eligibility criteria as provided in section 2(1)(a) of this act, the office of the superintendent of public instruction shall provide the higher education coordinating board with student names, addresses, birth dates, and unique numeric identifiers.

(b) Public and approved private high schools under chapter 28A.195 RCW shall provide requested information necessary for implementation of the program to the office of the superintendent of public instruction within the established timeline.

(c) All student data is confidential and may be used solely for the purposes of providing scholarships to eligible students.

(3) The higher education coordinating board may adopt rules to implement this chapter.

**NEW SECTION. Sec. 4.** The Washington promise scholarship program shall not be funded at the expense of the state need grant program as defined in RCW 28B.10.800 through 28B.10.824. In administering the state need grant and promise scholarship programs, the higher education coordinating board shall first ensure that eligibility for state need grant recipients is at least fifty-five percent of state median family income.

**NEW SECTION. Sec. 5.** This chapter shall not be construed to change current state requirements for students who received home-based instruction under chapter 28A.200 RCW.

**NEW SECTION. Sec. 6.** (1) The Washington promise scholarship account is created in the custody of the state treasurer. The account shall be a nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The higher education coordinating board shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of funds appropriated by the legislature for the Washington promise scholarship program, private contributions to the program, and refunds of Washington promise scholarships.

(3) Expenditures from the account shall be used for scholarships to eligible students.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the higher education coordinating board.

**Sec. 7.** RCW 43.79A.040 and 2001 c 201 s 4 and 2001 c 184 s 4 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the 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 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.

**NEW SECTION. Sec. 8.** Sections 1 through 6 of this act constitute a new chapter in Title 28B RCW.

**NEW SECTION.** **Sec. 9.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the House March 14, 2002.

Passed the Senate March 14, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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## CHAPTER 205

[Substitute Senate Bill 5543]

### SAFE SCHOOL PLANS

AN ACT Relating to school safety; amending RCW 28A.305.130; reenacting and amending RCW 42.17.310; adding a new section to chapter 28A.320 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.** Following the tragic events of September 11, 2001, the government's primary role in protecting the health, safety, and well-being of its citizens has been underscored. The legislature recognizes that there is a need to focus on the development and implementation of comprehensive safe school plans for each public school. The legislature recognizes that comprehensive safe school plans for each public school are an integral part of rebuilding public confidence. In developing these plans, the legislature finds that a coordinated effort is essential to ensure the most effective response to any type of emergency. Further, the legislature recognizes that comprehensive safe school plans for each public school are of paramount importance and will help to assure students, parents, guardians, school employees, and school administrators that our schools provide the safest possible learning environment.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) By June 1, 2002, within existing resources, the superintendent of public instruction, in consultation with representatives from the emergency management division of the state military department, educators, classified staff, principals, superintendents, administrators, the American society for industrial security, the state criminal justice training commission, the Washington association of sheriffs and police chiefs, and others as determined by the superintendent, shall provide guidance to school districts in developing comprehensive safe school plans for each school. This guidance shall include, but shall not be limited to, a comprehensive school safety checklist to use as a tool when developing their own individual comprehensive safe school plans, and successful models of comprehensive safe school plans that include prevention, intervention, all-hazards/crisis response, and postcrisis recovery.

(2) Schools and school districts shall consider the guidance, including the comprehensive school safety checklist and the model comprehensive safe school plans, when developing their own individual comprehensive safe school plans.

(3) The superintendent of public instruction, in consultation with school district superintendents, shall establish timelines for school districts to develop individual comprehensive safe school plans. The superintendent of public instruction shall require school districts to periodically report progress on their comprehensive safe school plans.

(4) The superintendent of public instruction may adopt rules to implement provisions of this section. These rules may include, but are not limited to, provisions for periodic drills and testing, evacuations, lockdowns, or other components of a comprehensive safe school plan.

**Sec. 3.** RCW 28A.305.130 and 1997 c 13 s 5 are each amended to read as follows:

In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Approve or disapprove the program of courses leading to teacher, school administrator, and school specialized personnel certification offered by all institutions of higher education within the state which may be accredited and whose graduates may become entitled to receive such certification.

(2) Conduct every five years a review of the program approval standards, including the minimum standards for teachers, administrators, and educational staff associates, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and educational staff associates.

(3) Investigate the character of the work required to be performed as a condition of entrance to and graduation from any institution of higher education in this state relative to such certification as provided for in subsection (1) (~~above~~) of this section, and prepare a list of accredited institutions of higher education of this and other states whose graduates may be awarded such certificates.

(4)(a) The state board of education shall adopt rules to allow a teacher certification candidate to fulfill, in part, teacher preparation program requirements through work experience as a classified teacher's aide in a public school or private school meeting the requirements of RCW 28A.195.010. The rules shall include, but are not limited to, limitations based upon the recency of the teacher preparation candidate's teacher aide work experience, and limitations based on the amount of work experience that may apply toward teacher preparation program requirements under this chapter.

(b) The state board of education shall require that at the time of the individual's enrollment in a teacher preparation program, the supervising teacher and the building principal shall jointly provide to the teacher preparation program of the higher education institution at which the teacher candidate is enrolled, a written assessment of the performance of the teacher candidate. The assessment shall contain such information as determined by the state board of education and

shall include: Evidence that at least fifty percent of the candidate's work as a classified teacher's aide was involved in instructional activities with children under the supervision of a certificated teacher and that the candidate worked a minimum of six hundred thirty hours for one school year; the type of work performed by the candidate; and a recommendation of whether the candidate's work experience as a classified teacher's aide should be substituted for teacher preparation program requirements. In compliance with such rules as may be established by the state board of education under this section, the teacher preparation programs of the higher education institution where the candidate is enrolled shall make the final determination as to what teacher preparation program requirements may be fulfilled by teacher aide work experience.

(5) Supervise the issuance of such certificates as provided for in subsection (1) ~~((above))~~ of this section and specify the types and kinds of certificates necessary for the several departments of the common schools by rule or regulation in accordance with RCW 28A.410.010.

(6) Accredit, subject to such accreditation standards and procedures as may be established by the state board of education, all schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve: **PROVIDED**, That no private school may be approved that operates a kindergarten program only: **PROVIDED FURTHER**, That no public or private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials: **PROVIDED FURTHER**, That the state board may elect to require all or certain classifications of the public schools to conduct and participate in such preaccreditation examination and evaluation processes as may now or hereafter be established by the board.

(7) Make rules and regulations governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established the district must obtain prior approval of the state board.

(8) Prepare such outline of study for the common schools as the board shall deem necessary, and prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.

(9) Continuously reevaluate courses and adopt and enforce regulations within the common schools so as to meet the educational needs of students and articulate with the institutions of higher education and unify the work of the public school system.

(10) Carry out board powers and duties relating to the organization and reorganization of school districts under RCW 28A.315.010 through 28A.315.680 and 28A.315.900.



(11) ~~((By rule or regulation promulgated upon the advice of the chief of the Washington state patrol, through the director of fire protection, provide for instruction of pupils in the public and private schools carrying out a K through 12 program, or any part thereof, so that in case of sudden emergency they shall be able to leave their particular school building in the shortest possible time or take such other steps as the particular emergency demands, and without confusion or panic; such rules and regulations shall be published and distributed to certificated personnel throughout the state whose duties shall include a familiarization therewith as well as the means of implementation thereof at their particular school. —(12)))~~ Hear and decide appeals as otherwise provided by law.

The state board of education is given the authority to promulgate information and rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools.

**Sec. 4.** RCW 42.17.310 and 2001 c 278 s 1, 2001 c 98 s 2, and 2001 c 70 s 1 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 or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing 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.

(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.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to section 2 of this act, to the extent that they identify specific vulnerabilities of school districts and each individual school.

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

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

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

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

**NEW SECTION. Sec. 6.** (1) Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

(2) Section 3 of this act takes effect September 1, 2002.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

## CHAPTER 206

[Substitute Senate Bill 6351]

### SCHOOLS—THREATS OF VIOLENCE

AN ACT Relating to safety of school employees and students; adding a new section to chapter 28A.320 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 28A.320 RCW to read as follows:

(1) By September 1, 2003, each school district board of directors shall adopt a policy that addresses the following issues:

(a) Procedures for providing notice of threats of violence or harm to the student or school employee who is the subject of the threat. The policy shall define "threats of violence or harm";

(b) Procedures for disclosing information that is provided to the school administrators about a student's conduct, including but not limited to the student's prior disciplinary records, official juvenile court records, and history of violence, to classroom teachers, school staff, and school security who, in the judgment of the principal, should be notified; and

(c) Procedures for determining whether or not any threats or conduct established in the policy may be grounds for suspension or expulsion of the student.

(2) The superintendent of public instruction, in consultation with educators and representatives of law enforcement, classified staff, and organizations with expertise in violence prevention and intervention, shall adopt a model policy that includes the issues listed in subsection (1) of this section by January 1, 2003. The model policy shall be posted on the superintendent of public instruction's web site. The school districts, in drafting their own policies, shall review the model policy.

(3) School districts, school district boards of directors, school officials, and school employees providing notice in good faith as required and consistent with the board's policies adopted under this section are immune from any liability arising out of such notification.

(4) A person who intentionally and in bad faith or maliciously, knowingly makes a false notification of a threat under this section is guilty of a misdemeanor punishable under RCW 9A.20.021.

Passed the Senate March 13, 2002.

Passed the House March 12, 2002.

Approved by the Governor March 27, 2002.

Filed in Office of Secretary of State March 27, 2002.

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**CHAPTER 207**

[Substitute House Bill 1444]

**SCHOOLS—BULLYING**

AN ACT Relating to preventing harassment, intimidation, or bullying in schools; adding a new section to chapter 28A.320 RCW; adding a new section to chapter 28A.600 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature declares that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The legislature finds that harassment, intimidation, or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment.



Furthermore, the legislature finds that students learn by example. The legislature commends school administrators, faculty, staff, and volunteers for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying.

**NEW SECTION. Sec. 2.** (1) By August 1, 2003, each school district shall adopt or amend if necessary a policy, within the scope of its authority, that prohibits the harassment, intimidation, or bullying of any student. It is the responsibility of each school district to share this policy with parents or guardians, students, volunteers, and school employees.

(2) "Harassment, intimidation, or bullying" means any intentional written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional written, verbal, or physical act:

- (a) Physically harms a student or damages the student's property; or
- (b) Has the effect of substantially interfering with a student's education; or
- (c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- (d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

(3) The policy should be adopted or amended through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives. It is recommended that each such policy emphasize positive character traits and values, including the importance of civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy prohibiting harassment, intimidation, or bullying.

(4) By August 1, 2002, the superintendent of public instruction, in consultation with representatives of parents, school personnel, and other interested parties, shall provide to school districts and educational service districts a model harassment, intimidation, and bullying prevention policy and training materials on the components that should be included in any district policy. Training materials shall be disseminated in a variety of ways, including workshops and other staff developmental activities, and through the office of the superintendent of public instruction's web site, with a link to the safety center web page. On the web site:

- (a) The office of the superintendent of public instruction shall post its model policy, recommended training materials, and instructional materials;
- (b) The office of the superintendent of public instruction has the authority to update with new technologies access to this information in the safety center, to the extent resources are made available; and
- (c) Individual school districts shall have direct access to the safety center web site to post a brief summary of their policies, programs, partnerships, vendors, and

instructional and training materials, and to provide a link to the school district's web site for further information.

***\*NEW SECTION. Sec. 3. A new section is added to chapter 28A.320 RCW to read as follows:***

***Beginning with the 2002-03 school year, each school district shall report to the superintendent of public instruction by January 31st of each year all incidents resulting in disciplinary action involving harassment, intimidation, or bullying on school premises or on transportation systems used by schools, in the year preceding the report. The superintendent shall compile the data and report it to the appropriate committees of the house of representatives and the senate.***

***\*Sec. 3 was vetoed. See message at end of chapter.***

***NEW SECTION. Sec. 4. A new section is added to chapter 28A.600 RCW to read as follows:***

(1) No school employee, student, or volunteer may engage in reprisal, retaliation, or false accusation against a victim, witness, or one with reliable information about an act of harassment, intimidation, or bullying.

(2) A school employee, student, or volunteer who has witnessed, or has reliable information that a student has been subjected to, harassment, intimidation, or bullying, whether verbal or physical, is encouraged to report such incident to an appropriate school official.

(3) A school employee, student, or volunteer who promptly reports an incident of harassment, intimidation, or bullying to an appropriate school official, and who makes this report in compliance with the procedures in the district's policy prohibiting bullying, harassment, or intimidation, is immune from a cause of action for damages arising from any failure to remedy the reported incident.

Passed the House March 9, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 27, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2002.

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

"I am returning herewith, without my approval as to section 3, Substitute House Bill No. 1444 entitled:

"AN ACT Relating to preventing harassment, intimidation, or bullying in schools;"

Substitute House Bill No. 1444 requires each school district to adopt a policy prohibiting harassment, intimidation, or bullying of any student. Our schools should be safe places, conducive to learning, where all students can learn without fear. I strongly support this bill, which will help ensure that parents, teachers and students take bullying seriously.

Section 3 of the bill would have required each school district to report all incidents resulting in disciplinary action involving harassment, intimidation, or bullying. "Incident" and "disciplinary action" are not defined terms. If every counseling session, intervention, detention or parent conference that resulted from a bullying incident were required to be reported, the burden would be overwhelming, and could serve as a disincentive for educators to take action except in the most egregious cases.

For these reasons, I have vetoed section 3 of Substitute House Bill No. 1444.

With the exception of section 3, Substitute House Bill No. 1444 is approved."

## CHAPTER 208

[Substitute House Bill 2568]

### SCHOOL FOR THE DEAF—INVESTIGATIONS

AN ACT Relating to formalizing the relationship between the department of social and health services and the state school for the deaf; adding a new section to chapter 26.44 RCW; and adding a new section to chapter 72.40 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 26.44 RCW to read as follows:

(1) The department must investigate referrals of alleged child abuse or neglect occurring at the state school for the deaf, including alleged incidents involving students abusing other students; determine whether there is a finding of abuse or neglect; and determine whether a referral to law enforcement is appropriate under this chapter.

(2) The department must send a copy of the investigation report, including the finding, regarding any incidents of alleged child abuse or neglect at the state school for the deaf to the school's superintendent. The department may include recommendations to the superintendent and the board of trustees or its successor board for increasing the safety of the school's students.

**NEW SECTION.** Sec. 2. A new section is added to chapter 72.40 RCW to read as follows:

(1) The department of social and health services must periodically monitor the residential program at the state school for the deaf, including but not limited to examining the residential-related policies and procedures as well as the residential facilities. The department of social and health services must make recommendations to the school's superintendent and the board of trustees or its successor board on health and safety improvements related to child safety and well-being. The department of social and health services must conduct the monitoring reviews at least quarterly until December 1, 2006.

(2) The department of social and health services must conduct a comprehensive child health and safety review, as defined in rule, of the residential program at the state school for the deaf every three years. The department of social and health services must deliver the first health and safety review to the governor, the legislature, the school's superintendent, and the school's board of trustees or successor board by December 1, 2004.

(3) The state school for the deaf must provide the department of social and health services' staff with full and complete access to all records and documents that the department staff may request to carry out the requirements of this section. The department of social and health services must have full and complete access to all students and staff of the state school for the deaf to conduct interviews to carry out the requirements of this section.

(4) For the purposes of this section, the department of social and health services must use the safety standards established in this chapter when conducting the reviews.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 209

[Engrossed Substitute Senate Bill 6558]  
SCHOOL FOR THE DEAF—GOVERNANCE

AN ACT Relating to the governance of the Washington state school for the deaf; amending RCW 72.40.010, 72.40.022, 72.40.024, 72.42.010, and 72.42.070; adding a new section to chapter 72.40 RCW; adding new sections to chapter 72.42 RCW; repealing RCW 72.42.020, 72.42.025, 72.42.030, and 72.42.040; and providing an effective date.

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

**Sec. 1.** RCW 72.40.010 and 1985 c 378 s 11 are each amended to read as follows:

There are established at Vancouver, Clark county, a school which shall be known as the state school for the blind, and a separate school which shall be known as the state school for the deaf. The primary purpose of the state school for the blind and the state school for the deaf is to educate and train hearing and visually impaired children.

The ~~((schools))~~ school for the blind shall be under the direction of ~~((their respective superintendents))~~ the superintendent with the advice of the board of trustees. The school for the deaf shall be under the direction of the superintendent and the board of trustees.

**Sec. 2.** RCW 72.40.022 and 1993 c 147 s 1 are each amended to read as follows:

In addition to any other powers and duties prescribed by law, the superintendent of the state school for the blind ~~((and the superintendent of the state school for the deaf))~~:

(1) Shall have full control of ~~((their respective schools))~~ the school and the property of various kinds.

(2) May establish criteria, in addition to state certification, for teachers at ~~((their respective schools))~~ the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the advice of the ~~((respective boards))~~ board of trustees.

(5) May establish new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as deemed necessary for the government, management, and operation of the housing facilities.

(7) Shall control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of ~~((their respective schools))~~ the school.

(8) May adopt rules for pedestrian and vehicular traffic on property owned, operated, and maintained by the ~~((respective schools))~~ school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of ~~((their respective schools))~~ the school.

(10) Except as otherwise provided by law, may enter into contracts as ~~((each))~~ the superintendent deems essential to the ~~((respective purposes of their schools))~~ purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the ~~((respective schools))~~ school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May, except as otherwise provided by law, enter into contracts ~~((as the superintendents deem))~~ the superintendent deems essential for the operation of ~~((their respective schools))~~ the school.

(13) May adopt rules providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(14) Shall prepare and administer ~~((their respective budgets))~~ the school's budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(15) May adopt rules under chapter 34.05 RCW and perform all other acts not forbidden by law as the superintendent~~((s))~~ deems necessary or appropriate to the administration of ~~((their respective schools))~~ the school.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 72.40 RCW to read as follows:

In addition to any other powers and duties prescribed by law, the superintendent of the state school for the deaf:

(1) Shall have the responsibility for the supervision and management of the school and the property of various kinds.

(2) May establish criteria, in addition to state certification, for the teachers at the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the approval of the board of trustees.

(5) May establish, with the approval of the board of trustees, new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as approved by the board of trustees, as deemed necessary for the governance, management, and operation of the housing facilities.

(7) Shall, as approved by the board of trustees, control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of the school.

(8) May adopt rules, as approved by the board of trustees, for pedestrian and vehicular traffic on property owned, operated, and maintained by the school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the school.

(10) Except as otherwise provided by law, may enter into contracts as the superintendent deems essential to the purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May adopt rules, as approved by the board of trustees, providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(13) Shall prepare, submit to the board of trustees for approval, and administer the budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(14) May adopt rules under chapter 34.05 RCW, as approved by the board of trustees, and perform all other acts not forbidden by law as the superintendent deems necessary or appropriate to the administration of the school.

**Sec. 4.** RCW 72.40.024 and 1993 c 147 s 2 are each amended to read as follows:

In addition to the powers and duties under RCW 72.40.022 and section 3 of this act, the superintendent of each school shall:

(1) Monitor the location and educational placement of each student reported to the superintendents by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superintendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction, provide instructional leadership, and assist school districts in improving their instructional programs for students with visual or hearing impairments.

**Sec. 5.** RCW 72.42.010 and 1985 c 378 s 31 are each amended to read as follows:

It is the intention of the legislature, in creating a board of trustees for the state school for the deaf to perform the duties set forth in this chapter, that the board of trustees perform needed ~~((advisory))~~ oversight services to the governor and the legislature ~~((and to the superintendent))~~ of the Washington state school for the deaf in the development of programs for the hearing impaired, and in the operation of the Washington state school for the deaf.

**NEW SECTION.** **Sec. 6.** A new section is added to chapter 72.42 RCW to read as follows:

Unless the context clearly requires otherwise, as used in this chapter "school" means the Washington state school for the deaf.

**NEW SECTION.** **Sec. 7.** A new section is added to chapter 72.42 RCW to read as follows:

(1) The governance of the school shall be vested in a board of trustees. The board shall consist of nine members appointed by the governor, with the consent of the senate. The board shall be composed of a resident from each of the state's congressional districts and may include:

- (a) One member who is deaf or hearing impaired;
  - (b) Two members who are experienced educational professionals;
  - (c) One member who is experienced in providing residential services to youth;
- and

(d) One member who is the parent of a child who is deaf or hearing impaired and who is receiving or has received educational services related to deafness or hearing impairment from a public educational institution.

(2) No voting trustee may be an employee of the school, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator appointed after July 1, 1986, or an elected officer or member of the legislative authority of any municipal corporation.

(3) Trustees shall be appointed by the governor to serve a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term. Of the initial members, three must be appointed for two-year terms, three must be appointed for three-year terms, and the remainder must be appointed for five-year terms.

(4) The board shall not be deemed unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on

the board solely by reason of the establishment of new or revised boundaries for congressional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed so long as the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any term shall be filled pursuant to subsection (3) of this section by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her appointment. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed.

**NEW SECTION.** Sec. 8. A new section is added to chapter 72.42 RCW to read as follows:

The board of trustees of the school:

- (1) Shall adopt rules and regulations for its own governance;
- (2) Shall direct the development of, approve, and monitor the enforcement of policies, rules, and regulations pertaining to the school, including but not limited to:
  - (a) The use of classrooms and other facilities for summer or night schools or for public meetings and any other uses;
  - (b) Pedestrian and vehicular traffic on property owned, operated, or maintained by the school;
  - (c) Governance, management, and operation of the residential facilities;
  - (d) Transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect; and
  - (e) Compliance with state and federal education civil rights laws at the school;
- (3) Shall develop a process for recommending candidates for the position of superintendent and upon a vacancy shall submit a list of three qualified candidates for superintendent to the governor;
- (4) Shall submit an evaluation of the superintendent to the governor by July 1st of each odd-numbered year that includes a recommendation regarding the retention of the superintendent;
- (5) May recommend to the governor at any time that the superintendent be removed for conduct deemed by the board to be detrimental to the interests of the school;
- (6) Shall prepare and submit by July 1st of each even-numbered year a report to the governor and the appropriate committees of the legislature which contains a detailed summary of the school's progress on performance objectives and the school's work, facility conditions, and revenues and costs of the school for the previous year and which contains those recommendations it deems necessary and advisable for the governor and the legislature to act on;



(7) Shall approve the school's budget and all funding requests, both operating and capital, submitted to the governor;

(8) Shall direct and approve the development and implementation of comprehensive programs of education, training, and as needed residential living, such that students served by the school receive a challenging and quality education in a safe school environment;

(9) Shall direct, monitor, and approve the implementation of a comprehensive continuous quality improvement system for the school;

(10) Shall monitor and inspect all existing facilities of the school and report its findings in its biennial report to the governor and appropriate committees of the legislature; and

(11) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate.

**NEW SECTION.** **Sec. 9.** A new section is added to chapter 72.42 RCW to read as follows:

(1) The board of trustees shall organize, adopt bylaws for its own governance, and adopt rules not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice-chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified.

(2) A majority of the voting members of the board in office constitutes a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed by its bylaws, rules, or regulations.

**Sec. 10.** RCW 72.42.070 and 1993 c 147 s 10 are each amended to read as follows:

The board of trustees shall meet at least quarterly but may meet more frequently at such times as the board by resolution determines or the bylaws of the board prescribe.

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

(1) RCW 72.42.020 (Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations) and 1993 c 147 s 9, 1985 c 378 s 33, 1982 1st ex.s. c 30 s 15, & 1972 ex.s. c 96 s 2;

(2) RCW 72.42.025 (Membership, effect of creation of new congressional districts or boundaries) and 1982 1st ex.s. c 30 s 16;

(3) RCW 72.42.030 (Bylaws—Rules and regulations—Officers) and 1972 ex.s. c 96 s 3; and

(4) RCW 72.42.040 (Powers and duties) and 1985 c 378 s 34, 1981 c 42 s 1, & 1972 ex.s. c 96 s 4.

NEW SECTION. **Sec. 12.** This act takes effect July 1, 2002, except that the governor may appoint the members of the board of trustees under section 7 of this act prior to the beginning of their terms of office on July 1, 2002.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

**CHAPTER 210**

[Substitute House Bill 1166]

**SALMON RECOVERY—PROJECT SPONSORS**

AN ACT Relating to entities eligible to be project sponsors for salmon recovery funding board grants; and amending RCW 77.85.010.

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

**Sec. 1.** RCW 77.85.010 and 2000 c 107 s 92 are each amended to read as follows:

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

(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) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under RCW 77.85.060(2). Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, state agency, a combination of such governments through interlocal or interagency

agreements (~~provided under chapter 39.34 RCW~~), a nonprofit organization, regional fisheries enhancement group, or one or more private citizens. A project sponsored by a state agency may be funded by the board only if it is included on the habitat project list submitted by the lead entity for that area and the state agency has a local partner that would otherwise qualify as a project sponsor.

(7) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(8) "Salmon recovery plan" means a state plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(9) "Tribe" or "tribes" means federally recognized Indian tribes.

(10) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(11) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owner's property.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 211

[Substitute House Bill 1189]

### ARCHAEOLOGICAL SITES--STUDIES--PERMITS

AN ACT Relating to the protection of archaeological sites; amending RCW 27.53.020, 27.53.060, and 27.53.080; adding a new section to chapter 27.53 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The purpose of this act is to give the department of community, trade, and economic development the authority to issue civil penalties to enforce the provisions of permits issued under RCW 27.53.060 and to take into consideration prior penalties issued under chapter 27.53 RCW and under comparable federal laws when issuing permits. Additionally, this act provides guidance to state agencies and political subdivisions of the state when approving archaeological activities on public lands.

**Sec. 2.** RCW 27.53.020 and 1986 c 266 s 16 are each amended to read as follows:

The discovery, identification, excavation, and study of the state's archaeological resources, the providing of information on archaeological sites for their nomination to the state and national registers of historic places, the maintaining of a complete inventory of archaeological sites and collections, and the providing of information to state, federal, and private construction agencies

regarding the possible impact of construction activities on the state's archaeological resources, are proper public functions; and the (~~Washington archaeological research center~~) office of archaeology and historic preservation, created under the authority of chapter 39.34 RCW (~~as now existing or hereafter amended~~), is hereby designated as an appropriate agency to carry out these functions. The director, in consultation with the (~~Washington archaeological research center~~) office of archaeology and historic preservation, shall provide guidelines for the selection of depositories designated by the state for archaeological resources. The legislature directs that there shall be full cooperation amongst the department, the (~~Washington archaeological research center~~) office of archaeology and historic preservation, and other agencies of the state.

**Sec. 3.** RCW 27.53.060 and 1989 c 44 s 7 are each amended to read as follows:

(1) On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in chapter 68.05 RCW, disturbances of which shall be a class C felony punishable under chapter 9A.20 RCW, without having obtained a written permit from the director for such activities.

(2) The director must obtain the consent of the private or public property owner or agency responsible for the management thereof, prior to issuance of the permit. The property owner or agency responsible for the management of such land may condition its consent on the execution of a separate agreement, lease, or other real property conveyance with the applicant as may be necessary to carry out the legal rights or duties of the public property landowner or agency.

(3) The director, in consultation with the affected tribes, shall develop guidelines for the issuance and processing of permits.

(4) Such written permit and any agreement or lease or other conveyance required by any public property owner or agency responsible for management of such land shall be physically present while any such activity is being conducted.

(5) The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites.

(6) When determining whether to grant or condition a permit, the director may give great weight to the final record of previous civil or criminal penalties against either the applicant, the parties responsible for conducting the work, or the parties responsible for carrying out the terms and conditions of the permit, either under this chapter or under comparable federal laws. If the director denies a permit, the applicant may request a hearing as provided for in chapter 34.05 RCW.

**NEW SECTION. Sec. 4.** A new section is added to chapter 27.53 RCW to read as follows:

(1) Persons found to have violated this chapter, either by a knowing and willful failure to obtain a permit where required under RCW 27.53.060 or by a knowing and willful failure to comply with the provisions of a permit issued by the director where required under RCW 27.53.060, in addition to other remedies as provided for by law, may be subject to one or more of the following:

(a) Reasonable investigative costs incurred by a mutually agreed upon independent professional archaeologist investigating the alleged violation;

(b) Reasonable site restoration costs; and

(c) Civil penalties, as determined by the director, in an amount of not more than five thousand dollars per violation.

(2) Any person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department of community, trade, and economic development.

(3) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(4) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter and to enforce subsection (5) of this section.

(5) Any and all artifacts in possession of a violator shall become the property of the state until proper identification of artifact ownership may be determined by the director.

(6) Penalties overturned on appeal entitle the appealing party to fees and other expenses, including reasonable attorneys' fees, as provided in RCW 4.84.350.

**Sec. 5.** RCW 27.53.080 and 1986 c 266 s 19 are each amended to read as follows:

(1) Qualified or professional archaeologists, in performance of their duties, ~~((are hereby authorized to))~~ may enter upon public lands of the state of Washington and its political subdivisions after first notifying the entity responsible for managing those public lands, at such times and in such manner as not to interfere with the normal management thereof, for the purposes of doing archaeological resource location and evaluation studies, including site sampling activities. The results of such studies shall be provided to the state agency or political subdivision responsible for such lands and the office of archaeology and historic preservation and are confidential unless the director, in writing, declares otherwise. Scientific excavations are to be carried out only after appropriate agreement has been made between a professional archaeologist or an institution of higher education and the agency or political subdivision responsible for such lands. ~~((Notice))~~ A copy of such agreement shall be filed with the ~~((Washington archaeological research~~

center)) office of archaeology and historic preservation and by them to the department.

(2) Amateur societies may engage in such activities by submitting and having approved by the responsible agency or political subdivision a written proposal detailing the scope and duration of the activity. Before approval, a proposal from an amateur society shall be submitted to the ((Washington archaeological research center)) office of archaeology and historic preservation for review and recommendation. The approving agency or political subdivision shall impose conditions on the scope and duration of the proposed activity necessary to protect the archaeological resources and ensure compliance with applicable federal, state, and local laws. The findings and results of activities authorized under this section shall be made known to the approving agency or political subdivision approving the activities and to the office of archaeology and historic preservation.

Passed the House February 1, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 212

[Substitute House Bill 1395]

### RURAL COUNTIES—BUSINESS DEVELOPMENT

AN ACT Relating to job retention in rural counties; amending RCW 36.70A.070; and adding a new section to chapter 36.70A RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70A RCW to read as follows:

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster

opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

**Sec. 2.** RCW 36.70A.070 and 1998 c 171 s 2 are each amended to read as follows:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable

funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or



mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdiction boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

Passed the House February 6, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 213

[Substitute House Bill 1759]  
HYPODERMIC SYRINGES

AN ACT Relating to the sale of hypodermic syringes; amending RCW 69.50.412, 69.50.4121, and 70.115.050; and adding a new section to chapter 70.115 RCW.

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

**Sec. 1.** RCW 69.50.412 and 1981 c 48 s 2 are each amended to read as follows:

(1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

**Sec. 2.** RCW 69.50.4121 and 1998 c 317 s 1 are each amended to read as follows:

(1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise

introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

- (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (f) Miniature cocaine spoons and cocaine vials;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bonges; and
- (m) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 70.115 RCW to read as follows:

Nothing contained in this act shall be construed to require a retailer to sell hypodermic needles or syringes to any person.

***\*Sec. 4. RCW 70.115.050 and 1981 c 147 s 5 are each amended to read as follows:***

***(1) On the sale at retail of any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection, the retailer shall satisfy himself or herself that the device will be used for the legal use intended.***

***(2) The sale of sterile hypodermic syringes and needles for the purpose of reducing the transmission of bloodborne diseases is a legal use under the provisions of this section.***

***(3) Sales must be limited to individuals over eighteen years of age and sales must be limited to the number of used hypodermic syringes and needles returned by the individual at the time of sale. Participating retailers shall provide materials relating to drug prevention and treatment and safe disposal techniques at the point of sale. The Washington board of pharmacy shall ndopt rules implementing the provisions of this subsection. Nothing in this section shall be construed to limit the ability of persons to purchase or possess hypodermic***

needles or syringes for other legal purposes, including administering medications, such as insulin.

(4) Biomedical waste shall be handled in a manner that protects the health, safety, and welfare of the public, the environment, and the workers who handle the waste. Safe disposal of syringes and needles purchased under this act shall be consistent with the provisions of RCW 70.95K.030.

\*Sec. 4 was vetoed. See message at end of chapter.

Passed the House March 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 28, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2002.

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

"I am returning herewith, without my approval as to section 4, Substitute House Bill No. 1759 entitled:

"AN ACT Relating to the sale of hypodermic syringes;"

This bill authorizes the sale and possession of hypodermic syringes and needles to reduce the transmission of bloodborne diseases, such as HIV/AIDS and hepatitis B and C.

Subsection 4(3) of the bill would have limited sales of syringes to the number of used hypodermic syringes and needles returned by the individual at the time of the sale. This provision would have the consequence of requiring *all* legal users of syringes to exchange their used injection equipment in order to purchase necessary supplies. Particularly affected by this requirement would be those individuals who are diabetic and insulin dependent.

Section 4 would have effectively made pharmacies universal disposal sites for used equipment. Pharmacy personnel would have been required to handle and count used needles, exposing them to risk of infection. That would be an unacceptable safety risk. Also, in many instances, pharmacies are not equipped to handle this disposal challenge or expense.

For these reasons, I have vetoed section 4 of Substitute House Bill No. 1759.

With the exception of section 4, Substitute House Bill No. 1759 is approved."

**CHAPTER 214**

[House Bill 1856]

**SCHOOL ABSENCES—SEARCH AND RESCUE ACTIVITIES**

AN ACT Relating to excused absences from school for search and rescue activities; and adding a new section to chapter 28A.225 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.225 RCW to read as follows:

The legislature finds that state-recognized search and rescue activities, as defined in chapter 38.52 RCW and the rules interpreting the chapter, are recognized as activities deserving of excuse from school. Therefore, the legislature strongly encourages that excused absences be granted to students for up to five days each year to participate in search and rescue activities, subject to approval by the student's parent and the principal of the student's school, and provided that the

activities do not cause a serious adverse effect upon the student's educational progress.

Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 215

[House Bill 2289]

### NURSERY IMPROVEMENT PROGRAMS

AN ACT Relating to assessments for planting stock certification and nursery improvement programs; amending RCW 15.13.310, 15.13.370, and 15.13.470; and adding a new section to chapter 15.13 RCW.

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

**Sec. 1.** RCW 15.13.310 and 2000 c 144 s 10 are each amended to read as follows:

(1) An annual assessment shall be levied on the gross sale price of the wholesale market value for all ~~((fruit trees, fruit tree related ornamental trees, and fruit tree rootstock produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer during any license period. Fruit tree related ornamental nursery stock shall be limited to the genera, Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus))~~ horticultural plants of the genera Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, Sorbus, and Vitis produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer during any license period. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted or budded and planted for growing-on in the nursery. The director shall by rule determine the rate of an assessment needed to carry out the grapevine and fruit tree certification and nursery improvement programs set forth in RCW 15.13.470 and chapter 15.14 RCW.

The wholesale market price may be determined by the wholesale catalogue price of the seller of the ~~((fruit trees, fruit tree related ornamentals, or fruit tree rootstock))~~ horticultural plants assessed under this section or of the shipper moving such nursery stock out of the state. If the seller or shipper does not have a catalogue, then the wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining the average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) The assessment is due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous year.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid.

NEW SECTION. **Sec. 2.** A new section is added to chapter 15.13 RCW to read as follows:

An advisory committee is established to advise the director in the administration of the grapevine certification and nursery improvement program.

(1) The committee consists of two grapevine nursery dealers; three grape growers, at least two of whom grow wine grapes; one winery representative; a university researcher; and the director.

(2) When appointing this committee, the director shall consider names submitted by the Washington association of wine grape growers and the Washington state grape society.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed.

**Sec. 3.** RCW 15.13.370 and 2000 c 144 s 15 are each amended to read as follows:

(1) Any person licensed under the provisions of this chapter may request the services of a department inspector at the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to the licensee a certificate of inspection signed by the inspector covering any horticultural plants which the inspector finds to be in compliance with the provisions of this chapter.

(2) Any person financially interested in any horticultural plants may request inspection and/or certification services provided for horticultural plants under this chapter.

(3) To facilitate the ~~((movement))~~ marketing of agricultural commodities and other plant products, the director may provide, if requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that service.

**Sec. 4.** RCW 15.13.470 and 2000 c 144 s 28 are each amended to read as follows:

(1) Except as provided in RCW 15.13.285 and in subsections (2) and (3) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter. No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected ~~((for fruit tree, fruit tree related ornamental tree, and fruit tree rootstock assessments as set forth in this chapter))~~ under RCW 15.13.310 shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington grapevine and fruit tree ~~((and fruit tree related ornamental tree))~~ certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

(3) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund.



Passed the House February 16, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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## CHAPTER 216

[Substitute House Bill 2315]

### RECREATION THERAPY

AN ACT Relating to recreation therapy; amending RCW 18.130.040; adding a new chapter to Title 18 RCW; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The overriding mission of therapeutic recreation is the provision of purposeful intervention designed to help clients grow and to assist them to prevent or relieve problems through recreation and leisure. It is a systematic methodology through a progression of phases, including assessment, planning, implementation, and evaluation. It is not a limited or restricted concept of service carried out only within the constraints of institutional care, but is a client-centered model that reflects a concern for the total well-being of the client. Recreation therapy is cost-effective and can decrease the costs of health care services by reducing primary and secondary disabilities. In anticipation of the expansion in long-term care, physical and psychiatric rehabilitation, and services for people with disabilities, the legislature finds and declares that the registration of recreational therapists is in the interest of the public health and safety.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

(2) "Recreation therapy" means the use of recreational, and/or community activities to include leisure counseling and community integration as treatment intervention to improve functional leisure and community competence of persons with a physical, cognitive, emotional, behavioral, or social disability. The primary purpose of recreation therapy is the use of leisure and community integration activities to restore, remediate, or rehabilitate persons in order to improve functioning and independence, as well as reduce or eliminate the effects of illness or disability.

(3) "Recreational therapist" means a person registered under this chapter.

(4) "Registration" means the registration issued to a person under this chapter.

(5) "Secretary" means the secretary of health or the secretary's designee.

**NEW SECTION. Sec. 3.** No person may practice or represent oneself as a registered recreational therapist by use of any title without being registered to practice by the department of health, unless otherwise exempted by this chapter.

**NEW SECTION. Sec. 4.** Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within the authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor.

**NEW SECTION. Sec. 5.** In addition to any other authority provided by law, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW necessary to implement this chapter;

(2) Establish all registration and renewal fees in accordance with RCW 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Register any applicants who have met the requirements for registration and to deny registration to applicants who do not meet the requirements of this chapter, except that proceedings concerning the denial of registration based upon unprofessional conduct or impairment is governed by the uniform disciplinary act, chapter 18.130 RCW;

(5) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter; and

(6) Maintain the official department record of all applicants and persons registered under this chapter.

**NEW SECTION. Sec. 6.** The secretary must keep an official record of all proceedings. A part of the record shall consist of a register of all applicants for registration under this chapter and the results of each application.

**NEW SECTION. Sec. 7.** (1) Applicants for registration under this chapter are subject to the grounds for denial of a registration under chapter 18.130 RCW.

(2) The secretary must issue a registration to an applicant who completes an application form that identifies the name and address of the applicant, the registration requested, and information required by the secretary necessary to establish whether there are grounds for denial of a registration.

**NEW SECTION. Sec. 8.** Applications for registration must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration provided for in this chapter and chapter 18.130 RCW. Each applicant must pay a fee determined by the secretary under RCW 43.70.250. The fee must accompany the application.

**NEW SECTION. Sec. 9.** The secretary must establish by rule the procedural requirements and fees for renewal of a registration. Failure to renew invalidates the registration and all privileges granted by the registration.

**NEW SECTION. Sec. 10.** The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of a registration, unauthorized practice, and the discipline of persons registered under this chapter. The secretary is the disciplining authority under this chapter.

**Sec. 11.** RCW 18.130.040 and 2001 c 251 s 27 are each amended to read as follows:

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

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

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists licensed under chapter 18.06 RCW;
- (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (x) Persons registered under chapter 18.19 RCW;
- (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
- (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
- (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
- (xiv) Health care assistants certified under chapter 18.135 RCW;
- (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
- (xvii) Sex offender treatment providers certified under chapter 18.155 RCW;
- (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
- (xix) Persons registered as adult family home providers and resident managers under RCW 18.48.020;
- (xx) Denturists licensed under chapter 18.30 RCW;
- (xxi) Orthotists and prosthetists licensed under chapter 18.200 RCW; ~~((and))~~
- (xxii) Surgical technologists registered under chapter 18.215 RCW; and

(xxiii) Recreational therapists.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;
- (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
- (iii) The dental quality assurance commission as established in chapter 18.32 RCW;
- (iv) The board of hearing and speech as established in chapter 18.35 RCW;
- (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
- (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
- (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
- (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
- (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
- (x) The board of physical therapy as established in chapter 18.74 RCW;
- (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
- (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;
- (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and
- (xiv) The veterinary board of governors as established in chapter 18.92 RCW.

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

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

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

**NEW SECTION. Sec. 13.** Sections 1 through 10 and 12 of this act constitute a new chapter in Title 18 RCW.

**NEW SECTION.** **Sec. 14.** This act takes effect July 1, 2003.

Passed the House February 19, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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## CHAPTER 217

[Engrossed Substitute House Bill 2325]

### DONATED FOOD

AN ACT Relating to donated food; amending RCW 69.80.050: adding a new section to chapter 69.80 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 and declares that the distribution of food by donors to charitable organizations, such as shelters, churches, and fraternal organizations, serving communal meals to needy individuals can be done safely consistent with rules and recommended health and safety guidelines. The establishment of recommended donor guidelines by the department of health can educate the public about the preparation and handling of food donated to charitable organizations for distribution to homeless and other needy people. The purpose of this act is to authorize and facilitate the donation of food to needy persons in accordance with health and safety guidelines and rules, to assure that the donated food will not place needy recipients at risk, and to encourage businesses and individuals to donate surplus food to charitable organizations serving our state's needy population.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 69.80 RCW to read as follows:

(1) No later than December 31, 2004, the state board of health shall promulgate rules for the safe receipt, preparation, and handling by distributing organizations of food accepted from donors in order to facilitate the donation of food, free of charge, and to protect the health and safety of needy people.

(2) No later than December 31, 2004, the department of health, in consultation with the state board of health, shall develop educational materials for donors containing recommended health and safety guidelines for the preparation and handling of food donated to distributing organizations.

**Sec. 3.** RCW 69.80.050 and 1983 c 241 s 6 are each amended to read as follows:

(1) Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of food items.

(2) To facilitate the free distribution of food to needy persons, the local health officer, upon request from either a donor or distributing organization, may grant

a variance to chapter 246-215 WAC covering physical facilities, equipment standards, and food source requirements when no known or expected health hazard would exist as a result of the action.

**NEW SECTION. Sec. 4.** 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 immediately.

Passed the House March 11, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 218

[Substitute House Bill 2357]

### COMMUNITY RENEWAL

AN ACT Relating to community renewal; amending RCW 35.81.010, 35.81.020, 35.81.030, 35.81.040, 35.81.050, 35.81.060, 35.81.070, 35.81.080, 35.81.090, 35.81.100, 35.81.110, 35.81.120, 35.81.130, 35.81.150, 35.81.160, 35.81.170, 35.81.180, 35.81.910, 35.82.070, 35.21.730, 35.21.745, 35.57.020, and 36.100.010; adding new sections to chapter 35.81 RCW; adding a new section to chapter 53.08 RCW; creating a new section; and recodifying RCW 35.81.010 and 35.81.020.

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

**Sec. 1.** RCW 35.81.010 and 1991 c 363 s 41 are each amended to read as follows:

The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Agency" or "~~((urban))~~ community renewal agency" ~~((shall))~~ means a public agency created ~~((by))~~ under RCW 35.81.160 or otherwise authorized to serve as a community renewal agency under this chapter.

(2) "Blighted area" ~~((shall))~~ means an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age or obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate ~~((or mixed))~~ uses of land or buildings; ~~((high density of population and))~~ existence of overcrowding of buildings or structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; existence of hazardous soils, substances, or materials; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; existence of persistent and high levels of unemployment or poverty within the area; or the existence of conditions ~~((which))~~ that endanger life or property by fire or other causes, or any

combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency ~~((and))~~ or crime; substantially impairs or arrests the sound growth of the ~~((city))~~ municipality or its environs, or retards the provision of housing accommodations ~~((or))~~; constitutes an economic or social liability~~((:))~~; and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, ~~((and))~~ or morals in its present condition and use.

(3) "Bonds" ~~((shall))~~ means any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(4) "Clerk" ~~((shall))~~ means the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(5) "Community renewal area" means a blighted area which the local governing body designates as appropriate for a community renewal project or projects.

(6) "Community renewal plan" means a plan, as it exists from time to time, for a community renewal project or projects, which plan (a) shall be consistent with the comprehensive plan or parts thereof for the municipality as a whole; (b) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community renewal area; zoning and planning changes, if any, which may include, among other things, changes related to land uses, densities, and building requirements; and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; (c) shall address the need for replacement housing, within the municipality, where existing housing is lost as a result of the community renewal project undertaken by the municipality under this chapter; and (d) may include a plan to address any persistent high levels of unemployment or poverty in the community renewal area.

(7) "Community renewal project" includes one or more undertakings or activities of a municipality in a community renewal area: (a) For the elimination and the prevention of the development or spread of blight; (b) for encouraging economic growth through job creation or retention; (c) for redevelopment or rehabilitation in a community renewal area; or (d) any combination or part thereof in accordance with a community renewal plan.

(8) "Federal government" ~~((shall include))~~ includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

~~((6))~~ (9) "Local governing body" ~~((shall))~~ means the council or other legislative body charged with governing the municipality.

~~((7))~~ (10) "Mayor" ~~((shall))~~ means the chief executive of a city or town, or the elected executive, if any, of any county operating under a charter, or the county legislative authority of any other county.

~~((8))~~ (11) "Municipality" ~~((shall))~~ means any incorporated city or town, or any county, in the state.

~~((9))~~ (12) "Obligee" ~~((shall include))~~ includes any bondholder, agent, or trustees for any bondholders, ~~((or))~~ any lessor demising to the municipality property used in connection with ~~((an urban))~~ a community renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

~~((10))~~ (13) "Person" ~~((shall))~~ means any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

~~((11))~~ (14) "Persons of low income" means an individual with an annual income, at the time of hiring or at the time assistance is provided under this chapter, that does not exceed the higher of either: (a) Eighty percent of the statewide median family income, adjusted for family size; or (b) eighty percent of the median family income for the county or standard metropolitan statistical area, adjusted for family size, where the community renewal area is located.

(15) "Public body" ~~((shall))~~ means the state or any municipality, ~~((township;))~~ board, commission, district, or any other subdivision or public body of the state or of a municipality.

~~((12))~~ (16) "Public officer" ~~((shall))~~ means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

~~((13))~~ (17) "Real property" ~~((shall))~~ includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

~~((14))~~ (18) "Redevelopment" ~~((may))~~ includes (a) acquisition of a blighted area or portion thereof; (b) demolition and removal of buildings and improvements; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the ~~((urban))~~ community renewal provisions of this chapter in accordance with the ~~((urban))~~ community renewal plan~~((, and))~~; (d) making the land available for development or redevelopment by private enterprise or public ~~((agencies))~~ bodies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the ~~((urban))~~ community renewal plan; and (e) making loans or grants to a person or public body for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

~~((15))~~ (19) "Rehabilitation" ~~((may))~~ includes the restoration and renewal of a blighted area or portion thereof, in accordance with ~~((an urban))~~ a community



renewal plan, by (a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (b) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the ~~((urban))~~ community renewal provisions of this chapter; and (d) the disposition of any property acquired in such ~~((urban))~~ community renewal area ~~((including sale, initial leasing, or retention by the municipality itself) at its fair value))~~ for uses in accordance with such ~~((urban))~~ community renewal plan.

~~((16) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.~~

~~—(17) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (a) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (b) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.~~

~~—(18) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan:))~~

Sec. 2. RCW 35.81.020 and 1965 c 7 s 35.81.020 are each amended to read as follows:

It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, hinders job creation and economic growth, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be

endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that there is an urgent need to enhance the ability of municipalities to act effectively and expeditiously to revive blighted areas and to prevent further blight due to shocks to the economy of the state and their actual and threatened effects on unemployment, poverty, and the availability of private capital for businesses and projects in the area.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

**Sec. 3.** RCW 35.81.030 and 1965 c 7 s 35.81.030 are each amended to read as follows:

A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the ((~~sound~~)) needs of the municipality as a whole, to the rehabilitation or redevelopment of the ((~~urban~~)) community renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this chapter, including the formulation of a workable program, the approval of ((~~urban~~)) community renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

**Sec. 4.** RCW 35.81.040 and 1965 c 7 s 35.81.040 are each amended to read as follows:

A municipality for the purposes of this chapter may formulate a workable program for ((~~utilizing~~)) using appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage

needed (~~(urban)~~) community rehabilitation, to provide for the redevelopment of such areas, or to undertake (~~(such of)~~) the (~~(aforesaid)~~) activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of (~~(such)~~) the workable program. (~~(Such)~~) The workable program may include, without limitation, provision for: The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; (~~(and)~~) the replacement of housing that is lost as a result of community renewal activities within a community renewal area; the clearance and redevelopment of blighted areas or portions thereof; and the reduction of unemployment and poverty within the community renewal area by providing financial or technical assistance to a person or public body that is used to create or retain jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

**Sec. 5.** RCW 35.81.050 and 1965 c 7 s 35.81.050 are each amended to read as follows:

(1) No municipality shall exercise any of the powers hereafter conferred upon municipalities by this chapter until after its local governing body shall have adopted (~~(a)~~) an ordinance or resolution finding that: (~~((1))~~) (a) One or more blighted areas exist in such municipality; and (~~((2))~~) (b) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

(2) After adoption of the ordinance or resolution making the findings described in subsection (1) of this section, the local governing body of the municipality may elect to have the powers of a community renewal agency under this chapter exercised in one of the following ways:

(a) By appointing a board or commission composed of not less than five members, which board or commission shall include municipal officials and elected officials, selected by the mayor, with approval of the local governing body of the municipality; or

(b) By the local governing body of the municipality directly; or

(c) By the board of a public corporation, commission, or authority under chapter 35.21 RCW, or a public facilities district created under chapter 35.57 or 36.100 RCW, or a public port district created under chapter 53.04 RCW, or a housing authority created under chapter 35.82 RCW, that is authorized to conduct activities as a community renewal agency under this chapter.

**Sec. 6.** RCW 35.81.060 and 1965 c 7 s 35.81.060 are each amended to read as follows:

(1) A municipality shall not approve ~~((an urban))~~ a community renewal project for ~~((an urban))~~ a community renewal area unless the local governing body has, by ordinance or resolution, determined such an area to be a blighted area and designated ~~((such))~~ the area as appropriate for ~~((an urban))~~ a community renewal project. The local governing body shall not approve ~~((an urban))~~ a community renewal plan until a comprehensive plan or parts of ~~((such))~~ the plan for an area which would include ~~((an urban))~~ a community renewal area for the municipality have been prepared as provided in chapter ~~((35.63 RCW. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor))~~ 36.70A RCW. For municipalities not subject to the planning requirements of chapter 36.70A RCW, any proposed comprehensive plan must be consistent with a local comprehensive plan adopted under chapter 35.63 or 36.70 RCW, or any other applicable law. A municipality shall not acquire real property for ~~((an urban))~~ a community renewal project unless the local governing body has approved the ~~((urban))~~ community renewal project plan in accordance with subsection (4) ~~((hereof))~~ of this section.

(2) The municipality may itself prepare or cause to be prepared ~~((an urban))~~ a community renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of ~~((an urban))~~ a community renewal project, the local governing body shall ~~((submit such plan to the planning commission of the municipality for review and recommendations as to its conformity))~~ review and determine the conformity of the community renewal plan with the comprehensive plan or parts thereof for the development of the municipality as a whole. ((The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within sixty days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (3) hereof)) If the community renewal plan is not consistent with the existing comprehensive plan, the local governing body may amend its comprehensive plan or community renewal plan.

(3) Prior to adoption, the local governing body shall hold a public hearing on ~~((an urban))~~ a community renewal plan after providing public notice ~~((thereof))~~. ~~((Such))~~ The notice shall be given by publication once each week for two consecutive weeks not less than ten nor more than thirty days prior to the date of the hearing in a newspaper having a general circulation in the ~~((urban))~~ community renewal area of the municipality and by mailing a notice of ~~((such))~~ the hearing not

less than ten days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the ~~((urban))~~ community renewal area affected, and shall outline the general scope of the ~~((urban))~~ community renewal plan under consideration.

(4) Following ~~((such))~~ the hearing, the local governing body may approve ~~((an urban))~~ a community renewal project if it finds that (a) a ~~((workable and))~~ feasible plan exists for making available adequate housing for the ~~((persons))~~ residents who may be displaced by the project; (b) the ~~((urban))~~ community renewal plan conforms to the comprehensive plan ~~((or parts thereof))~~ for the municipality ~~((as a whole))~~; (c) the ~~((urban))~~ community renewal plan will afford maximum opportunity, consistent with the ~~((sound))~~ needs of the municipality ~~((as a whole))~~, for the rehabilitation or redevelopment of the ~~((urban))~~ community renewal area by private enterprise; ~~((and))~~ (d) a sound and adequate financial program exists for the financing of ~~((said))~~ the project; and (e) the ~~((urban))~~ community renewal project area is a blighted area as defined in RCW 35.81.010(2) (as recodified by this act).

(5) ~~((An urban))~~ A community renewal project plan may be modified at any time by the local governing body ~~((PROVIDED, That))~~. However, if modified after the lease or sale by the municipality of real property in the ((urban)) community renewal project area, ((such)) the modification shall be subject to ((such)) the rights at law or in equity as a lessee or purchaser, or ((his)) the successor or successors in interest may be entitled to assert.

(6) ~~((Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto))~~ Unless otherwise expressly stated in an ordinance or resolution of the governing body of the municipality, a community renewal plan shall not be considered a subarea plan or part of a comprehensive plan for purposes of chapter 36.70A RCW. However, a municipality that has adopted a comprehensive plan under chapter 36.70A RCW may adopt all or part of a community renewal plan at any time as a new or amended subarea plan, whether or not any subarea plan has previously been adopted for all or part of the community renewal area. Any community renewal plan so adopted, unless otherwise determined by the growth management hearings board with jurisdiction under a timely appeal in RCW 36.70A.280, shall be conclusively presumed to comply with the requirements in this chapter for consistency with the comprehensive plan.

**Sec. 7.** RCW 35.81.070 and 1965 c 7 s 35.81.070 are each amended to read as follows:

Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others (~~herein~~) granted under this chapter:

(1) To undertake and carry out (~~urban~~) community renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter, and to disseminate blight clearance and (~~urban~~) community renewal information.

(2) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for, or in connection with, (~~an urban~~) a community renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of (~~an urban~~) a community renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(3) To provide financial or technical assistance, using available public or private funds, to a person or public body for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

(4) To make payments, loans, or grants to, provide assistance to, and contract with existing or new owners and tenants of property in the community renewal areas as compensation for any adverse impacts, such as relocation or interruption of business, that may be caused by the implementation of a community renewal project, and/or consideration for commitments to develop, expand, or retain land uses that contribute to the success of the project or plan, including without limitation businesses that will create or retain jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

(5) To contract with a person or public body to provide financial assistance, authorized under this section, to property owners and tenants impacted by the implementation of the community renewal plan and to provide incentives to property owners and tenants to encourage them to locate in the community renewal area after adoption of the community renewal plan.

(6) Within the municipality, to enter upon any building or property in any (~~urban~~) community renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with

any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance: PROVIDED, That no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to ~~((an urban))~~ a community renewal project.

~~((4))~~ (7) To invest any ~~((urban))~~ community renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to RCW 35.81.100 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

~~((5))~~ (8) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for ~~((an urban))~~ a community renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter.

~~((6))~~ (9) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (a) A comprehensive plan or parts thereof for the locality as a whole, (b) ~~((urban))~~ community renewal plans, (c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, ~~((and))~~ (e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of ~~((urban))~~ community renewal projects, and (f) plans to provide financial or technical assistance to a person or public body for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of ~~((urban))~~ blight, for job creation or retention

activities, and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

~~((7))~~ (10) To prepare plans for the relocation of families displaced from ~~((an urban))~~ a community renewal area, and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

~~((8))~~ (11) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and in accordance with state law: (a) Levy taxes and assessments for such purposes; (b) acquire land either by negotiation ~~((and/or))~~ or eminent domain, or both; (c) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (d) plan or replan, zone or rezone any part of the municipality; (e) adopt annual budgets for the operation of ~~((an urban))~~ a community renewal agency, department, or offices vested with ~~((urban))~~ community renewal project powers under RCW 35.81.150; and (f) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter.

~~((9))~~ (12) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

~~((10))~~ (13) To contract with a person or public body to assist in carrying out the purposes of this chapter.

(14) To exercise all or any part or combination of powers herein granted.

**Sec. 8.** RCW 35.81.080 and 1965 c 7 s 35.81.080 are each amended to read as follows:

A municipality shall have the right to acquire by condemnation, in accordance with the procedure provided for condemnation by such municipality for other purposes, any interest in real property, which it may deem necessary for ~~((an urban))~~ a community renewal project under this chapter after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for ~~((urban))~~ community renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or ~~((his))~~ a predecessor in interest by eminent domain may be condemned for the purposes of this chapter.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the



improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

**Sec. 9.** RCW 35.81.090 and 1965 c 7 s 35.81.090 are each amended to read as follows:

(1) A municipality, with approval of its legislative authority, may acquire real property, or any interest therein, for the purposes of a community renewal project (a) prior to the selection of one or more persons interested in undertaking to redevelop or rehabilitate the real property, or (b) after the selection of one or more persons interested in undertaking to redevelop or rehabilitate such real property. In either case the municipality may select a redeveloper through a competitive bidding process consistent with this section or through a process consistent with section 10 of this act.

(2) A municipality, with approval of its legislative authority, may sell, lease, or otherwise transfer real property or any interest therein acquired by it for ~~((an urban))~~ a community renewal project, in ~~((an urban))~~ a community renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such a property or interest only for parks and recreation, education, public utilities, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the ~~((urban))~~ community renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this chapter ~~((: PROVIDED, That))~~. However, such a sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the ~~((urban))~~ community renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote ~~((such))~~ the real property only to the uses specified in the ~~((urban))~~ community renewal plan, and may be obligated to comply with ~~((such))~~ any other requirements as the municipality may determine to be in the public interest, including the obligation to begin and complete, within a reasonable time, any improvements on ~~((such))~~ the real property required by the ~~((urban))~~ community renewal plan or promised by the transferee. ~~((Such))~~ The real property or interest shall be sold, leased, or otherwise transferred ~~((, or retained at not less than its fair value for uses in accordance with the urban renewal plan))~~ for the consideration the municipality determines adequate. In determining the ~~((fair value of real property for uses in accordance with the urban renewal plan))~~ adequacy of consideration, a municipality ~~((shall))~~ may take into account ~~((, and give consideration to;))~~ the uses ~~((provided in such))~~ permitted under the community renewal plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the ~~((purchaser or lessee or by the municipality retaining the~~

property)) transferee; and the public benefits to be realized, including furthering of the objectives of ((such)) the plan for the prevention of the recurrence of blighted areas.

(3) The municipality in any instrument of conveyance to a private purchaser or lessee may provide that ((such)) the purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property, or to permit changes in ownership or control of a purchaser or lessee that is not a natural person, in each case without the prior written consent of the municipality until ((he)) the purchaser or lessee has completed the construction of ((any and)) all improvements ((which he)) that it has obligated ((himself)) itself to construct thereon. The municipality may also retain the right, upon any earlier transfer or change in ownership or control without consent; or any failure or change in ownership or control without consent; or any failure to complete the improvements within the time agreed to terminate the transferee's interest in the property; or to retain or collect on any deposit or instrument provided as security, or both. The enforcement of these restrictions and remedies is declared to be consistent with the public policy of this state. Real property acquired by a municipality ((which)) that, in accordance with the provisions of the ((urban)) community renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the ((urban)) community renewal plan. The inclusion in any ((such)) contract or conveyance to a purchaser or lessee of any ((such)) covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of ((an urban)) a community renewal plan or any part thereof) shall not prevent the recording of such a contract or conveyance in the land records of the auditor or the county in which ((such)) the city or town is located, in ((such)) a manner ((as to)) that affords actual or constructive notice thereof.

((2)) (4)(a)(i) A municipality may dispose of real property in ((an urban)) a community renewal area, acquired by the municipality under this chapter, to any private persons only under ((such)) those reasonable competitive bidding procedures as it shall prescribe, or by competitive bidding as ((hereinafter)) provided in this subsection, through direct negotiation where authorized under (c) of this subsection, or by a process authorized in section 10 of this act.

(ii) A competitive bidding process may occur (A) prior to the purchase of the real property by the municipality, or (B) after the purchase of the real property by the municipality.

(b)(i) A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate ((an urban)) a

community renewal area, or any part thereof. ~~((Such))~~ This notice shall identify the area, or portion thereof, and shall state that ~~((such))~~ further information as is available may be obtained at ~~((such))~~ the office as shall be designated in ~~((said))~~ the notice.

(ii) The municipality shall consider all responsive redevelopment or rehabilitation bids and the financial and legal ability of the persons making ~~((such))~~ the bids to carry them out. The municipality may accept ~~((such))~~ the bids as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the municipality may execute, in accordance with the provisions of subsection ~~((1))~~ (2) of this section, and deliver contracts, deeds, leases, and other instruments of transfer.

~~((3))~~ (c) If the legislative authority of the municipality determines that the sale of real property to a specific person is necessary to the success of a neighborhood revitalization or community renewal project for which the municipality is providing assistance to a nonprofit organization from federal community development block grant funds under 42 U.S.C. Sec. 5305(a)(15), or successor provision, under a plan or grant application approved by the United States department of housing and urban development, or successor agency, then the municipality may sell or lease that property to that person through direct negotiation, for consideration determined by the municipality to be adequate consistent with subsection (2) of this section. This direct negotiation may occur, and the municipality may enter into an agreement for sale or lease, either before or after the acquisition of the property by the municipality. Unless the municipality has provided notice to the public of the intent to sell or lease the property by direct negotiation, as part of a citizen participation process adopted under federal regulations for the plan or grant application under which the federal community development block grant funds have been awarded, the municipality shall publish notice of the sale at least fifteen days prior to the conveyance of the property.

(5) A municipality may operate and maintain real property acquired in ~~((an urban))~~ a community renewal area for a period of three years pending the disposition of the property for redevelopment, without regard to the provisions of subsection ~~((1) above)~~ (2) of this section, for such uses and purposes as may be deemed desirable even though not in conformity with the ~~((urban))~~ community renewal plan~~((—PROVIDED, That))~~. However, the municipality may, after a public hearing, extend the time for a period not to exceed three years.

(6) Any covenants, restrictions, promises, undertakings, releases, or waivers in favor of a municipality contained in any deed or other instrument accepted by any transferee of property from the municipality or community renewal agency under this chapter, or contained in any document executed by any owner of property in a community renewal area, shall run with the land to the extent provided in the deed, instrument, or other document, so as to bind, and be enforceable by the municipality against, the person accepting or making the deed,

instrument, or other document and that person's heirs, successors in interest, or assigns having actual or constructive notice thereof.

**NEW SECTION. Sec. 10.** A new section is added to chapter 35.81 RCW to read as follows:

(1) The process authorized under this section may occur (a) prior to the purchase of the real property by the municipality, or (b) after the purchase of the real property by the municipality.

(2) A municipality may, by public notice once each week for three consecutive weeks in a legal newspaper in the municipality, or prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite statements of interest and qualifications and, at the municipality's option, proposals from any persons interested in undertaking to redevelop or rehabilitate the real property.

(3) The notice required under this section shall identify the area, or portion thereof, the process the municipality will use to evaluate qualifications and, if applicable, proposals submitted by redevelopers or any persons, and other information relevant to the community renewal project. The notice shall also state that further information, as is available, may be obtained at the offices designated in the notice.

(4)(a) Based on its evaluation of qualifications and, if applicable, proposals, the municipality may select a proposer with whom to negotiate or may select two or more finalists to submit proposals, or to submit more detailed or revised proposals. The municipality may, in its sole discretion, reject all responses or proposals, amend any solicitation to allow modification or supplementation of qualifications or proposals, or waive irregularities in the content or timing of any qualifications or proposals.

(b) The municipality may initiate negotiations with the person selected on the basis of qualifications or proposals. If the municipality does not enter into a contract with that person, it may (i) enter into negotiations with the person that submitted the next highest ranked qualifications or proposal, (ii) solicit additional proposals using a process permitted by RCW 35.81.090, or (iii) otherwise dispose of or retain the real property consistent with the provisions of this chapter. A municipality shall not be required to select or enter into a contract with any proposer or to compensate any proposer for the cost of preparing a proposal or negotiating with the municipality.

(c) A municipality, with approval of its legislative authority, may select and enter into a contract with more than one proposer to carry out different aspects or parts of a community renewal plan.

**Sec. 11.** RCW 35.81.100 and 1983 c 167 s 64 are each amended to read as follows:

(1) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any ((urban)) community renewal

project under this chapter, including, without limiting the generality (~~(thereof)~~) of this power, the payment of principal and interest upon any advances for surveys and plans for (~~(urban)~~) community renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of (~~(urban)~~) community renewal projects under this chapter (~~(- PROVIDED, That)~~). However, the payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the municipality, the federal government, or from other sources, in aid of any ((urban)) community renewal projects of the municipality under this chapter.

(2) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose, and together with interest thereon and income therefrom, shall be exempted from all taxes.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(4) Such bonds may be sold at not less than ninety-eight percent of par at public or private sale, or may be exchanged for other bonds on the basis of par: PROVIDED, That such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight percent of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(5)(a) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all

bonds payable from the fund are paid in full. Any other taxing unit (~~(in a municipality)~~) that receives property tax revenues from property in the community renewal area is authorized to allocate (~~(a like amount of such)~~) excess taxes, computed in the same manner, to the municipality or municipalities in which it is situated.

(b) In addition to the excess property tax revenues from property in the community renewal area, authorized in this subsection, the municipality may annually pay into the fund, established in this subsection, any and all excess of the excise tax received by it from business activity in the community renewal area over and above the average of the annual excise tax collected for a five-year period immediately preceding the establishment of a community renewal area. The payment may continue until all the bonds payable from the fund are paid in full. Any other taxing unit that receives excise tax from business activity in the community renewal area is authorized to allocate excess excise tax, computed in the same manner, to the municipality or municipalities in which it is situated. As used in this subsection, "excise tax" means a local retail sales and use tax authorized in chapter 82.14 RCW. The legislature declares that it is a proper purpose of a municipality to allocate an excise tax for purposes of a community renewal project under this chapter.

(6) In case any of the public officials of the municipality whose signatures appear on any bonds or any coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds, issued pursuant to this chapter shall be fully negotiable.

(7) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with (~~(an urban)~~) a community renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this chapter.

(8) Notwithstanding subsections (1) through (7) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

**Sec. 12.** RCW 35.81.110 and 1965 c 7 s 35.81.110 are each amended to read as follows:

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or

within their control in any bonds or other obligations issued by a municipality ((pursuant to)) under this chapter(~~(: PROVIDED, That such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity))~~). Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

**NEW SECTION. Sec. 13.** A new section is added to chapter 35.8I RCW to read as follows:

(1) A community renewal agency may establish local improvement districts within the community renewal area, and levy special assessments, in annual installments extending over a period not exceeding twenty years on all property specially benefited by the local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of the local improvement, and issue local improvement bonds to be paid from local improvement assessments. The formation of the local improvement districts, the determination, levy, and collection of such assessments, and the issuance of such bonds shall be as provided for the formation of local improvement districts, the determination, levy, and collection of local improvement assessments, and the issuance of local improvement bonds by cities and towns, insofar as consistent with this chapter. These bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, the bonds authorized under subsection (1) of this section may be issued and sold in accordance with chapter 39.46 RCW.

**NEW SECTION. Sec. 14.** A new section is added to chapter 35.8I RCW to read as follows:

Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district created under section 13 of this act shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased benefit the improvement adds to the property.

**Sec. 15.** RCW 35.81.120 and 1965 c 7 s 35.81.120 are each amended to read as follows:

(1) All property of a municipality, including funds, owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property: PROVIDED, That the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants, or revenues from ~~((urban))~~ community renewal projects.

(2) The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: PROVIDED, That such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in ~~((an urban))~~ a community renewal area to a purchaser or lessee ~~((which))~~ that is not a public body or other organization normally entitled to tax exemption with respect to such property.

**Sec. 16.** RCW 35.81.130 and 1965 c 7 s 35.81.130 are each amended to read as follows:

~~((H))~~ For the purpose of aiding in the planning, undertaking, or carrying out of ~~((an urban))~~ a community renewal project located within the area in which it is authorized to act, any public body authorized by law or by this chapter, may, upon such terms, with or without consideration, as it may determine: ~~((A))~~ (1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality or other public body; ~~((B))~~ (2) incur the entire expense of any public improvements made by ~~((such))~~ a public body, in exercising the powers granted in this section; ~~((C))~~ (3) do any and all things necessary to aid or cooperate in the planning or carrying out of ~~((an urban))~~ a community renewal plan; ~~((D))~~ (4) lend, grant, or contribute funds, including without limitation any funds derived from bonds issued or other borrowings authorized in this chapter, to a municipality or other public body and, subject only to any applicable constitutional limits, to any other person; ~~((E))~~ (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with ~~((an urban))~~ a community renewal project ~~((and F))~~; (6) cause public building and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works ~~((which))~~ that it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; (7) abate environmental problems; (8) plan or replan, zone or



rezone any part of the ~~((urban))~~ community renewal area; and (9) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

~~((2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with the provisions of RCW 35.81.090(2).))~~

**Sec. 17.** RCW 35.81.150 and 1965 c 7 s 35.81.150 are each amended to read as follows:

(1) A municipality may itself exercise its ~~((urban))~~ community renewal project powers ~~((as herein defined))~~ or may, if the local governing body by ordinance or resolution determines such action to be in the public interest, elect to have such powers exercised by the ~~((urban))~~ community renewal agency ~~((created by RCW 35.81.160))~~ or a department or other officers of the municipality or by any ~~((existing))~~ other public body ~~((corporate, as they are authorized to exercise under this chapter)).~~

(2) In the event the local governing body ~~((makes such determination))~~ determines to have the powers exercised by the community renewal agency, such body may authorize the ~~((urban))~~ community renewal agency or department or other officers of the municipality to exercise any of the following ~~((urban))~~ community renewal project powers:

(a) To formulate and coordinate a workable program as specified in RCW 35.81.040.

(b) To prepare ~~((urban))~~ community renewal plans.

(c) To prepare recommended modifications to ~~((an urban))~~ a community renewal project plan.

(d) To undertake and carry out ~~((urban))~~ community renewal projects as required by the local governing body.

~~((e) To acquire, own, lease, encumber, and sell real or personal property. The agency may not acquire real or personal property using the eminent domain process, unless authorized independently of this chapter.~~

~~((f) To create local improvement districts under sections 13 and 14 of this act.~~

~~((g) To issue bonds from time to time in its discretion to finance the undertaking of any community renewal project under this chapter. The bonds issued under this section must meet the requirements of RCW 35.81.100.~~

~~((h) To make and execute contracts as specified in RCW 35.81.070, with the exception of contracts for the purchase or sale of real or personal property.~~

~~((f))~~ (i) To disseminate blight clearance and ~~((urban))~~ community renewal information.

~~((g))~~ (j) To exercise the powers prescribed by RCW 35.81.070(2), except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages, shall be reserved to the local governing body.

~~((h))~~ (k) To enter any building or property, in any ~~((urban))~~ community renewal area, in order to make surveys and appraisals in the manner specified in RCW 35.81.070~~((3))~~ (6).

~~((i))~~ (l) To improve, clear, or prepare for redevelopment any real or personal property in ~~((an-urban))~~ a community renewal area.

~~((j))~~ (m) To insure real or personal property as provided in RCW 35.81.070~~((3))~~ (6).

~~((k))~~ (n) To effectuate the plans provided for in RCW 35.81.070~~((6))~~ (9).

~~((h))~~ (o) To prepare plans for the relocation of families displaced from ~~((an urban))~~ a community renewal area and to coordinate public and private agencies in such relocation.

~~((m))~~ (p) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

~~((n))~~ (q) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of ~~((urban))~~ community renewal projects.

~~((o))~~ (r) To negotiate for the acquisition of land.

~~((p))~~ (s) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto.

~~((q))~~ (t) To provide financial and technical assistance to a person or public body, for the purpose of creating or retaining jobs, a substantial portion of which, as determined by the municipality, shall be for persons of low income.

(u) To make payments, grants, and other assistance to, or contract with, existing or new owners and tenants of property in the community renewal area, under RCW 35.81.070.

(v) To organize, coordinate, and direct the administration of the provisions of this chapter.

~~((r))~~ (w) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and the performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this chapter that are not included in ~~((RCW 35.81.150(2)))~~ this subsection (2) as powers of the ~~((urban))~~ community renewal agency or a department or other officers of a municipality in lieu thereof~~((;))~~ may only be exercised by the local governing body or other officers, boards, and commissions as provided ~~((under-existing))~~ by law.

**Sec. 18.** RCW 35.81.160 and 1965 c 7 s 35.81.160 are each amended to read as follows:

(1) When a municipality has made the finding prescribed in RCW 35.81.050 and has elected to have the ~~((urban))~~ community renewal project powers, as specified in RCW 35.81.150, exercised, such ~~((urban))~~ community renewal project powers may be assigned to a department or other officers of the municipality or to

any existing public body corporate, or the legislative body of a ((city)) municipality may create ((an urban)) a community renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(2) If the ((urban)) community renewal agency is authorized to transact business and exercise powers ((hereunder)) under this chapter, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the ((urban)) community renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years, except that in the case of death, incapacity, removal, or resignation of a commissioner, the replacement may be appointed to serve the remainder of the commissioner's term

(3) A commissioner shall receive no compensation for ((his)) services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties. Each commissioner shall hold office until ((his)) a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of ((an urban)) a community renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The ((urban)) community renewal agency or department or officers exercising ((urban)) community renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31st of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a legal newspaper ((of general circulation)) in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the ((city)) clerk of the municipality and in the office of the agency.

(4) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed by the legislative body of the municipality.

**Sec. 19.** RCW 35.81.170 and 1965 c 7 s 35.81.170 are each amended to read as follows:

For all of the purposes of this chapter, no person shall, because of race, creed, color, sex, or national origin, be subjected to any discrimination.

**Sec. 20.** RCW 35.81.180 and 1965 c 7 s 35.81.180 are each amended to read as follows:

No ~~((public))~~ official~~(;)~~ or department or division head of a municipality or ~~((urban))~~ community renewal agency or department or officers ~~((which have been vested by a municipality with urban))~~ with responsibility for making or supervising any decisions in the exercise of community renewal project powers and responsibilities under RCW 35.81.150~~(;)~~ shall voluntarily acquire any interest, direct or indirect, in any ~~((urban))~~ community renewal project, or in any property included or planned to be included in any ~~((urban))~~ community renewal project of such municipality, or in any contract or proposed contract in connection with such ~~((urban))~~ community renewal project. ~~((Where))~~ Whether or not such an acquisition is ~~((not))~~ voluntary, the ~~((interest acquired))~~ person acquiring it shall ~~((be))~~ immediately ~~((disclosed))~~ disclose the interest acquired in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official~~(;)~~ or department or division head owns or controls, or owned or controlled within two years prior to the date of the first public hearing on the ~~((urban))~~ community renewal project, any interest, direct or indirect, in any property ~~((which))~~ that he or she knows is included in ~~((an urban))~~ a community renewal project, he or she shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official~~(;)~~ or department or division head shall not participate in any action on that particular project by the municipality or ~~((urban))~~ community renewal agency~~((; department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of RCW 35.81.150. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this chapter shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or officers))~~. Any willful violation of the provisions of this section shall constitute misconduct in office.

**Sec. 21.** RCW 35.81.910 and 1965 c 7 s 35.81.910 are each amended to read as follows:

This chapter shall be known and may be cited as the "~~((Urban))~~ Community Renewal Law."

**Sec. 22.** RCW 35.82.070 and 1993 c 478 s 17 are each amended to read as follows:

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments, including but not limited to partnership agreements and joint venture agreements, necessary or convenient to the exercise of the powers of the authority; to participate in the organization or the operation of a nonprofit corporation which has as one of its purposes to provide or assist in the provision of housing for persons of low income; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(2) Within its area of operation: To prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to agree to rent or sell dwellings forming part of the projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements, or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(3) To acquire, lease, rent, sell, or otherwise dispose of any commercial space located in buildings or structures containing a housing project or projects.

(4) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(5) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own or manage buildings containing a housing project or projects as well as commercial space or other dwelling units that do not constitute a housing project as that term is defined in this chapter(~~(- PROVIDED, That)~~). However, notwithstanding the provisions under subsection (1) of this section, dwelling units made available or sold to persons of low income, together with functionally related and subordinate facilities, shall occupy at least fifty percent of the interior space in the total development owned by the authority or at least fifty percent of the total number of units in the development owned by the authority, whichever produces the greater number of units for persons of low income, and for mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park owned by the authority;

to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise including financial assistance and other aid from the state or any public body, person or corporation, any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to sell, lease, exchange, transfer, or dispose of any real or personal property or interest therein at less than fair market value to a governmental entity for any purpose when such action assists the housing authority in carrying out its powers and purposes under this chapter, to a low-income person or family for the purpose of providing housing for that person or family, or to a nonprofit corporation provided the nonprofit corporation agrees to sell the property to a low-income person or family or to use the property for the provision of housing for persons of low income for at least twenty years; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

(6) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled.

(7) Within its area of operation: To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(8) Acting through one or more commissioners or other person or persons designated by the authority: To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation) its findings and

recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(9) To initiate eviction proceedings against any tenant as provided by law. Activity occurring in any housing authority unit that constitutes a violation of chapter 69.41, 69.50 or 69.52 RCW shall constitute a nuisance for the purpose of RCW 59.12.030(5).

(10) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(11) To agree (notwithstanding the limitation contained in RCW 35.82.210) to make such payments in lieu of taxes as the authority finds consistent with the achievement of the purposes of this chapter.

(12) Upon the request of a county or city, to exercise any powers of ~~((an urban))~~ a community renewal agency under chapter 35.81 RCW or a public corporation, commission, or authority under chapter 35.21 RCW. ~~((However, in the exercise of any such powers the housing authority shall be subject to any express limitations contained in this chapter.))~~

(13) To exercise the powers granted in this chapter within the boundaries of any city, town, or county not included in the area in which such housing authority is originally authorized to function: **PROVIDED, HOWEVER,** The governing or legislative body of such city, town, or county, as the case may be, adopts a resolution declaring that there is a need for the authority to function in such territory.

(14) To administer contracts for assistance payments to persons of low income in accordance with section 8 of the United States Housing Act of 1937, as amended by Title II, section 201 of the Housing and Community Development Act of 1974, P.L. 93-383.

(15) To sell at public or private sale, with or without public bidding, for fair market value, any mortgage or other obligation held by the authority.

(16) To the extent permitted under its contract with the holders of bonds, notes, and other obligations of the authority, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the authority is a party.

(17) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease, or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(18) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing, or refinancing of land, buildings, or

developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(a) Any development financed under this subsection shall be subject to an agreement that for at least twenty years the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least fifty percent of the interior space in the total development or at least fifty percent of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park. During the term of the agreement, the owner shall use its best efforts in good faith to maintain the dwelling units or mobile home lots required to be made available to persons of low income at rents affordable to persons of low income. The twenty-year requirement under this subsection (18)(a) shall not apply when an authority finances the development by nonprofit corporations or governmental units of dwellings or mobile home lots intended for sale to persons of low and moderate income, and shall not apply to construction or other short-term financing provided to nonprofit corporations or governmental units when the financing has a repayment term of one year or less.

(b) In addition, if the development is owned by a for-profit entity, the dwelling units or mobile home lots required to be made available to persons of low income shall be rented to persons whose incomes do not exceed fifty percent of the area median income, adjusted for household size, and shall have unit or lot rents that do not exceed fifteen percent of area median income, adjusted for household size, unless rent subsidies are provided to make them affordable to persons of low income.

For purposes of this subsection (18)(b), if the development is owned directly or through a partnership by a governmental entity or a nonprofit organization, which nonprofit organization is itself not controlled by a for-profit entity or affiliated with any for-profit entity that a nonprofit organization itself does not control, it shall not be treated as being owned by a for-profit entity when the governmental entity or nonprofit organization exercises legal control of the ownership entity and in addition, (i) the dwelling units or mobile home lots required to be made available to persons of low income are rented to persons whose incomes do not exceed sixty percent of the area median income, adjusted for household size, and (ii) the development is subject to an agreement that transfers ownership to the governmental entity or nonprofit organization or extends an irrevocable right of first refusal to purchase the development under a formula for setting the acquisition price that is specified in the agreement.

(c) Commercial space in any building financed under this subsection that exceeds four stories in height shall not constitute more than twenty percent of the interior area of the building. Before financing any development under this subsection the authority shall make a written finding that financing is important for



project feasibility or necessary to enable the authority to carry out its powers and purposes under this chapter.

(19) To contract with a public authority or corporation, created by a county, city, or town under RCW 35.21.730 through 35.21.755, to act as the developer for new housing projects or improvement of existing housing projects.

**Sec. 23.** RCW 35.21.730 and 1985 c 332 s 1 are each amended to read as follows:

In order to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, or to improve the general living conditions in the urban areas of the state, any city, town, or county may by lawfully adopted ordinance or resolution:

(1) Transfer to any public corporation, commission, or authority created ~~((hereunder))~~ under this section, with or without consideration, any funds, real or personal property, property interests, or services;

(2) Organize and participate in joint operations or cooperative organizations funded by the federal government when acting solely as coordinators or agents of the federal government;

(3) Continue federally-assisted programs, projects, and activities after expiration of contractual term or after expending allocated federal funds as deemed appropriate to fulfill contracts made in connection with such agreements or as may be proper to permit an orderly readjustment by participating corporations, associations, or individuals;

(4) Enter into contracts with public corporations, commissions, and authorities for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW; and

(5) Create public corporations, commissions, and authorities to: Administer and execute federal grants or programs; receive and administer private funds, goods, or services for any lawful public purpose; and perform any lawful public purpose or public function. The ordinance or resolution shall limit the liability of such public corporations, commissions, and authorities to the assets and properties of such public corporation, commission, or authority in order to prevent recourse to such cities, towns, or counties or their assets or credit.

**Sec. 24.** RCW 35.21.745 and 1985 c 332 s 2 are each amended to read as follows:

(1) Any city, town, or county which shall create a public corporation, commission, or authority pursuant to RCW 35.21.730 or 35.21.660, shall provide for its organization and operations and shall control and oversee its operation and funds in order to correct any deficiency and to assure that the purposes of each program undertaken are reasonably accomplished.

(2) Any public corporation, commission, or authority created as provided in RCW 35.21.730 may be empowered to own and sell real and personal property; to contract with a city, town, or county to conduct community renewal activities under chapter 35.81 RCW; to contract with individuals, associations, and

corporations, and the state and the United States; to sue and be sued; to loan and borrow funds and issue bonds and other instruments evidencing indebtedness; transfer any funds, real or personal property, property interests, or services; to do anything a natural person may do; and to perform all manner and type of community services(~~(:—PROVIDED, That such)~~). However, the public corporation, commission, or authority shall have no power of eminent domain nor any power to levy taxes or special assessments.

**Sec. 25.** RCW 35.57.020 and 1999 c 165 s 2 are each amended to read as follows:

(1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers. For purposes of this chapter, "regional center" means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving a regional population constructed, improved, or rehabilitated after July 25, 1999, at a cost of at least ten million dollars, including debt service. "Regional center" also includes an existing convention, conference, or special events center, and related parking facilities, serving a regional population, that is improved or rehabilitated after July 25, 1999, where the costs of improvement or rehabilitation are at least ten million dollars, including debt service. A regional center is conclusively presumed to serve a regional population if state and local government investment in the construction, improvement, or rehabilitation of the regional center is equal to or greater than ten million dollars.

(2) A public facilities district may enter into contracts with any city or town for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(3) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations for the purpose of a regional center.

~~((3))~~ (4) A public facilities district may impose charges, fees, and taxes authorized in RCW 35.57.040, and use revenues derived therefrom for the purpose of paying principal and interest payments on bonds issued by the public facilities district to construct a regional center.

~~((4))~~ (5) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

~~((5))~~ (6) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center.

(7) A city or town in conjunction with any special agency, authority, or other district established by a county or any other governmental agency is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction,

remodel, or alteration of any regional center funded in whole or in part by a public facilities district.

**Sec. 26.** RCW 36.100.010 and 1995 3rd sp.s. c 1 s 301 are each amended to read as follows:

(1) A public facilities district may be created in any county and shall be coextensive with the boundaries of the county.

(2) A public facilities district shall be created upon adoption of a resolution providing for the creation of such a district by the county legislative authority in which the proposed district is located.

(3) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(4) No taxes authorized under this chapter may be assessed or levied unless a majority of the voters of the public facilities district has approved such tax at a general or special election. A single ballot proposition may both validate the imposition of the sales and use tax under RCW 82.14.048 and the excise tax under RCW 36.100.040.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) A public facilities district may enter into contracts with a county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(7) The county legislative authority or the city council may transfer property to the public facilities district created under this chapter. No property that is encumbered with debt or that is in need of major capital renovation may be transferred to the district without the agreement of the district and revenues adequate to retire the existing indebtedness.

**NEW SECTION. Sec. 27.** A new section is added to chapter 53.08 RCW to read as follows:

A port district may enter into a contract with any city, town, or county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

**NEW SECTION. Sec. 28.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 29.** (1) This act does not impair any authority granted, any actions undertaken, or any liability or obligation incurred under the sections

amended in this act or under any rule, order, plan, or project adopted under those sections, nor does it impair any proceedings instituted under those sections.

(2) Any power granted in this act with respect to a community renewal plan, and any process authorized for the exercise of the power, may be used by any municipality in implementing any urban renewal plan or project adopted under chapter 35.81 RCW, to the same extent as if the plan were adopted as a community renewal plan.

(3) This act shall be liberally construed.

**NEW SECTION.** **Sec. 30.** (1) RCW 35.81.010 is recodified as RCW 35.81.015.

(2) RCW 35.81.020 is recodified as RCW 35.81.005.

Passed the House March 11, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 219

[Substitute House Bill 2382]

### CRIMINAL MISTREATMENT

AN ACT Relating to criminal mistreatment; amending RCW 9A.42.040, 9A.42.045, 10.05.010, 10.05.020, 10.05.030, 10.05.040, 10.05.050, 26.44.130, and 10.05.120; adding new sections to chapter 9A.42 RCW; adding a new section to chapter 10.05 RCW; adding a new section to chapter 74.13 RCW; creating new sections; prescribing penalties; and providing an expiration date.

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

**NEW SECTION.** **Sec. 1.** The legislature recognizes that responses by the department of social and health services and public safety agencies have varied between jurisdictions when allegations of withholding of the basic necessities of life are made. The legislature intends to improve the capacity of the department of social and health services and public safety agencies to respond to situations where the basic necessities of life are withheld by allowing an earlier intervention in such cases. The legislature finds that improved coordination between the department of social and health services and public safety agencies at an earlier point will lead to better treatment of children and families and will reduce the likelihood of serious harm.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 9A.42 RCW to read as follows:

(1) A person is guilty of the crime of criminal mistreatment in the fourth degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

(2) Criminal mistreatment in the fourth degree is a misdemeanor.

**Sec. 3.** RCW 9A.42.040 and 2000 c 76 s 2 are each amended to read as follows:

RCW 9A.42.020, 9A.42.030, ((and)) 9A.42.035, and section 2 of this act do not apply to decisions to withdraw life support systems made in accordance with chapter 7.70 or 70.122 RCW by the dependent person, his or her legal surrogate, or others with a legal duty to care for the dependent person.

**Sec. 4.** RCW 9A.42.045 and 2000 c 76 s 3 are each amended to read as follows:

RCW 9A.42.020, 9A.42.030, ((and)) 9A.42.035, and section 2 of this act do not apply when a terminally ill or permanently unconscious person or his or her legal surrogate, as set forth in chapter 7.70 RCW, requests, and the person receives, palliative care from a licensed home health agency, hospice agency, nursing home, or hospital providing care under the medical direction of a physician. As used in this section, the terms "terminally ill" and "permanently unconscious" have the same meaning as "terminal condition" and "permanent unconscious condition" in chapter 70.122 RCW.

**NEW SECTION.** **Sec. 5.** A new section is added to chapter 9A.42 RCW to read as follows:

(1) When a law enforcement officer arrests a person for criminal mistreatment of a child, the officer must notify child protective services.

(2) When a law enforcement officer arrests a person for criminal mistreatment of a dependent person other than a child, the officer must notify adult protective services.

**Sec. 6.** RCW 10.05.010 and 1998 c 208 s 1 are each amended to read as follows:

(1) In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution

program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once. Separate offenses committed more than seven days apart may not be consolidated in a single program.

(3) A person charged with a misdemeanor or a gross misdemeanor under chapter 9A.42 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once.

**Sec. 7.** RCW 10.05.020 and 1996 c 24 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment program as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of social and health services to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall also contain a case history and a written service plan from the department of social and health services.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgement of his or her rights; (b) an acknowledgement and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgement that

the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he or she is innocent of the charges or sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems, or in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

~~((3))~~ (4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

**Sec. 8.** RCW 10.05.030 and 1999 c 143 s 42 are each amended to read as follows:

The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved alcoholism treatment program as designated in chapter 70.96A RCW, if the petition alleges an alcohol problem, an approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem, ~~((or))~~ to an approved mental health center, if the petition alleges a mental problem, or the department of social and health services if the petition is brought under RCW 10.05.020(2).

**Sec. 9.** RCW 10.05.040 and 1985 c 352 s 7 are each amended to read as follows:

The facility to which such person is referred, or the department of social and health services if the petition is brought under RCW 10.05.020(2), shall conduct an investigation and examination to determine:

- (1) Whether the person suffers from the problem described;
- (2) Whether the problem is such that if not treated, or if no child welfare services are provided, there is a probability that similar misconduct will occur in the future;
- (3) Whether extensive and long term treatment is required;

(4) Whether effective treatment or child welfare services for the person's problem ~~((is))~~ are available; and

(5) Whether the person is amenable to treatment or willing to cooperate with child welfare services.

**Sec. 10.** RCW 10.05.050 and 1985 c 352 s 8 are each amended to read as follows:

(1) The facility, or the department of social and health services if the petition is brought under RCW 10.05.020(2), shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment or the implementation of a child welfare service plan, it shall also recommend a treatment or service plan setting out:

~~((1))~~ (a) The type;

~~((2))~~ (b) Nature;

~~((3))~~ (c) Length;

~~((4))~~ (d) A treatment or service time schedule; and

~~((5))~~ (e) Approximate cost of the treatment or child welfare services.

(2) In the case of a child welfare service plan, the plan shall be designed in a manner so that a parent who successfully completes the plan will not be likely to withhold the basic necessities of life from his or her child.

(3) The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility, or the department of social and health services if the petition is brought under RCW 10.05.020(2), making the written report shall append to the report a commitment by the treatment facility or the department of social and health services that it will provide the treatment or child welfare services in accordance with this chapter. The facility or the service provider shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment or child welfare service plan proposed and (b) the petitioner's progress or failure in treatment or child welfare services. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment or services.

**Sec. 11.** RCW 26.44.130 and 1988 c 190 s 4 are each amended to read as follows:

When a peace officer responds to a call alleging that a child has been subjected to sexual or physical abuse or criminal mistreatment and has probable cause to believe that a crime has been committed or responds to a call alleging that a temporary restraining order or preliminary injunction has been violated, the peace officer has the authority to arrest the person without a warrant pursuant to RCW 10.31.100.



NEW SECTION. **Sec. 12.** A new section is added to chapter 10.05 RCW to read as follows:

Child welfare services provided under chapter 74.13 RCW pursuant to a deferred prosecution ordered under RCW 10.05.060 may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW.

NEW SECTION. **Sec. 13.** A new section is added to chapter 74.13 RCW to read as follows:

The department or its contractors may provide child welfare services pursuant to a deferred prosecution plan ordered under chapter 10.05 RCW. Child welfare services provided under this chapter pursuant to a deferred prosecution order may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW.

**Sec. 14.** RCW 10.05.120 and 1998 c 208 s 3 are each amended to read as follows:

(1) Three years after receiving proof of successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution pursuant to a petition brought under RCW 10.05.020(1), the court shall dismiss the charges pending against the petitioner.

(2) When a deferred prosecution is ordered pursuant to a petition brought under RCW 10.05.020(2) and the court has received proof that the petitioner has successfully completed the child welfare service plan, or the plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home, the court shall dismiss the charges pending against the petitioner: PROVIDED, That in any case where the petitioner's parental rights have been terminated with regard to the alleged victim due to abuse or neglect that occurred during the pendency of the deferred prosecution, the termination shall be per se evidence that the petitioner did not successfully complete the child welfare service plan.

NEW SECTION. **Sec. 15.** (1) The department of social and health services, in consultation with the attorney general and organizations representing law enforcement agencies, shall prepare a plan for improved coordination of services to families when a member of the family is charged with criminal mistreatment under chapter 9A.42 RCW. The plan shall include revisions in the department's identification of the needs for services for the families following an arrest and filing of criminal mistreatment charges, delivery of such services, ways of enhancing cooperation with law enforcement agencies during and following the investigation and trial on such charges, improved identification of those incidents which may precede such charges and are indicators of a need for offering of services and possible improvements in the methods of response to such incidents, suggestions for ongoing efforts in reducing the number of criminal mistreatment charges through improved identification of incidents and trends that are markers

of potentially serious family stress, and a review of the adequacy of current sentencing for violations of the criminal mistreatment statutes.

(2) The department of social and health services shall regularly consult with the legislature in the preparation of the plan. The plan shall be submitted to the governor and the legislature not later than December 1, 2002.

(3) This section expires December 31, 2002.

Passed the House March 9, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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**CHAPTER 220**

[House Bill 2397]

**ORGANIC FOODS**

AN ACT Relating to organic food products; amending RCW 15.86.010, 15.86.020, 15.86.030, 15.86.060, 15.86.070, and 15.86.090; adding a new section to chapter 15.86 RCW; repealing RCW 15.86.031, 15.86.035, 15.86.050, 15.86.080, and 15.86.100; and prescribing penalties.

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

**Sec. 1.** RCW 15.86.010 and 1992 c 71 s 1 are each amended to read as follows:

The legislature recognizes a public benefit in:

(1) Establishing standards ((for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic." Such standards shall also facilitate the development of out-of-state markets for Washington food grown by organic methods)) governing the labeling and advertising of food products and agricultural commodities as organically produced;

(2) Providing certification under the federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic;"

(3) Providing access for Washington producers, processors, and handlers to domestic and international markets for organic food products; and

(4) Establishing a state organic program under the federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder.

**Sec. 2.** RCW 15.86.020 and 1992 c 71 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) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic food" means any agricultural product, in whole or in part, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic (~~(, other than the phrase "transition to organic food," in its labeling or advertising)~~) and that is produced, handled, and processed in accordance with this chapter.

(3) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(4) (~~("Vendor" means anyone who sells or arranges the sale of organic food to the consumer or another vendor:)~~) "Handler" means any person who sells, distributes, or packs organic or transitional products.

(5) (~~("Transition to organic")~~) Transitional food" means any food product that satisfies all of the requirements of organic food except the time requirements ((and satisfied all of the requirements of RCW 15.86.031)) as defined in rule.

(6) "Organic certifying agent" means any third-party certification organization that is recognized by the director (~~(by rule)~~) as being one which imposes, for certification, standards consistent with this chapter.

(7) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing organic food.

(8) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(9) "Department" means the state department of agriculture.

(10) "Represent" means to hold out as or to advertise.

(11) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

**Sec. 3.** RCW 15.86.030 and 1992 c 71 s 3 are each amended to read as follows:

To be labeled, sold, or represented as an organic food, a product shall be produced (~~(with only those materials and practices approved)~~) under standards established under RCW 15.86.060. A producer, processor, or (~~a vendor~~) handler shall not represent, sell, or offer for sale any food product with the representation that the product is an organic food if the producer, processor, or (~~vendor~~) handler knows, or (~~(in the case of a producer or processor)~~) has reason to know, that the food has not been (~~(grown, raised, or produced with the use of any prohibited materials listed by the director)~~) produced, processed, or handled in accordance with standards established under RCW 15.86.060. (~~(Organic animal products shall be considered as "grown, raised, or produced" with a substance listed by the director under RCW 15.86.060 if the substance has been applied to the plants, soil, water, or animal, on or in which the organic animal product is being produced during such time frame as specified by the director by rule. Other food products~~

shall be considered as "grown, raised, or produced" with a substance listed by the director under RCW 15.86.060 if the substance is applied to the plants, soil, or water, on or in which the food product is being produced at any time from three years before harvest to the final sale to retail purchasers:))

**Sec. 4.** RCW 15.86.060 and 1992 c 71 s 7 are each amended to read as follows:

(1) The director shall adopt ~~((such))~~ rules ~~((and regulations))~~, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the adoption of the national organic program under the federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder and for the proper administration of this chapter.

(2) ~~((The director shall establish a list of approved substances that may be used in the production, processing, and handling of organic food. This list shall:~~

~~— (a) Approve the use of natural substances except for specific natural substances that may not be used in the production and handling of agricultural products labeled as organic because these substances would be harmful to human health or the environment and are inconsistent with organic farming principles;~~

~~— (b) Prohibit the use of synthetic substances except for specific synthetic substances that may be used in the production and handling of agricultural products labeled as organic because these substances:~~

~~— (i) Would not be harmful to human health or the environment;~~

~~— (ii) Are necessary to the production or handling of the agricultural products;~~

~~— (iii) Are consistent with organic farming principles; and~~

~~— (iv) Are used in the production of agricultural products and contain active synthetic ingredients in the following categories: Copper and sulfur compounds; toxins derived from bacteria; pheromones; soaps; horticultural oils; vitamins and minerals; livestock parasiticides and medicines; and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers; or~~

~~— (v) Are used in production and contain synthetic inert ingredients.~~

~~((3)))~~ The director shall issue orders to producers, processors, or ~~((vendors))~~ handlers whom he or she finds are violating any provision of this chapter, or rules or regulations adopted under this chapter, to cease their violations and desist from future violations. Whenever the director finds that a producer, processor, or ~~((vendor))~~ handler has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of the following amounts: (a) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and (b) one thousand dollars.

~~((4)))~~ (3) The director may deny, suspend, or revoke a certification provided for in this chapter if he or she determines that an applicant or certified person has violated this chapter or rules adopted under it.

**Sec. 5.** RCW 15.86.070 and 1997 c 303 s 4 are each amended to read as follows:

(1) The director may adopt rules establishing a ~~((certification))~~ program for certifying producers, processors, and ~~((vendors of))~~ handlers as meeting state, national, or international standards for organic or ((transition to organic)) transitional food. The rules may govern, but are not limited to governing: The number and scheduling of on-site visits, both announced and unannounced, by certification personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the organic food program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section.

(2) The fees established under this section may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 for the fiscal year ending June 30, ~~((1998))~~ 2003.

**Sec. 6.** RCW 15.86.090 and 1992 c 71 s 8 are each amended to read as follows:

(1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or ~~((an official))~~ a recognized organic certifying agent.

(2) Subsection (1) of this section shall not apply to:

(a) Final retailers of organic food that do not process organic food products;  
or

(b) Producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers.

**NEW SECTION. Sec. 7.** A new section is added to chapter 15.86 RCW to read as follows:

The department is authorized to take such actions, conduct proceedings, and enter orders as permitted or contemplated for a state organic program under the federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder. The state organic program shall not be inconsistent with the requirements of 7 U.S.C. Sec. 6501 et seq. and the rules adopted thereunder, including 7 C.F.R. Sec. 205.668. The department shall adopt rules necessary to implement this section.

**NEW SECTION. Sec. 8.** The following acts or parts of acts are each repealed:

(1) RCW 15.86.031 ("Transition to organic food"—Out-of-state products) and 1992 c 71 s 4 & 1989 c 354 s 31;

(2) RCW 15.86.035 (Transition to organic food—Proof) and 1989 c 354 s 33;

(3) RCW 15.86.050 (Producers to provide proof of compliance with law) and 1992 c 71 s 5 & 1985 c 247 s 5;

(4) RCW 15.86.080 (Labeling and recordkeeping requirements) and 1992 c 71 s 6; and

(5) RCW 15.86.100 (Drift of prohibited substances—Tolerance levels) and 1992 c 71 s 9.

Passed the House February 12, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

**CHAPTER 221**

[Substitute House Bill 2432]

**DRIVING RECORD ABSTRACTS**

AN ACT Relating to driving record abstracts furnished to transit authorities; and amending RCW 46.52.130.

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

**Sec. 1.** RCW 46.52.130 and 2001 c 309 s 1 are each amended to read as follows:

(1) A certified abstract of the driving record shall be furnished only to:

(a) The individual named in the abstract((:));

(b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer((:));

(c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;

(d) The insurance carrier that has insurance in effect covering the employer or a prospective employer((:));

(e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual((:));

(f) The insurance carrier to which the named individual has applied((:));

(g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment((:)); or

(h) City and county prosecuting attorneys.

(2) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(3) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.

(4) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.

(5) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract ((or)), to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(6) The abstract, whenever possible, shall include:

(a) An enumeration of motor vehicle accidents in which the person was driving;

(b) The total number of vehicles involved;

(c) Whether the vehicles were legally parked or moving;

(d) Whether the vehicles were occupied at the time of the accident;

(e) Whether the accident resulted in any fatality;

(f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; ((and))

(g) The status of the person's driving privilege in this state(~~(- The enumeration shall include)~~); and

(h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(7) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

(8) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

(9) The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

(10) Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(11) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

(12) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.

(13) Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

(14) Release of a certified abstract of the driving record of an employee or prospective employee requires a statement signed by: ~~((1))~~ (a) The employee or prospective employee that authorizes the release of the record, and ~~((2))~~ (b) the employer attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(15) Any negligent violation of this section is a gross misdemeanor.

(16) Any intentional violation of this section is a class C felony.



Passed the House March 11, 2002.  
 Passed the Senate March 7, 2002.  
 Approved by the Governor March 28, 2002.  
 Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 222

[Substitute House Bill 2435]

### FISH AND WILDLIFE DOCUMENTS—DUPLICATES

AN ACT Relating to duplicate fish and wildlife documents; and amending RCW 77.32.256.

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

**Sec. 1.** RCW 77.32.256 and 1995 c 116 s 6 are each amended to read as follows:

The director shall by rule establish the conditions and fees for issuance of duplicate licenses, rebates, permits, tags, and stamps required by this chapter. The fee for ~~((a duplicate provided under this section is ten dollars for those licenses that are ten dollars and over, and for those licenses under ten dollars the duplicate fee is the value of the license))~~ duplicate licenses, rebates, permits, tags, and stamps may not exceed the actual cost to the department for issuing the duplicate

Passed the House February 12, 2002.  
 Passed the Senate March 7, 2002.  
 Approved by the Governor March 28, 2002.  
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## CHAPTER 223

[House Bill 2444]

### ADULT FAMILY HOME PROVIDERS AND RESIDENT MANAGERS

AN ACT Relating to regulation of adult family home providers and resident managers; amending RCW 70.128.120, 70.128.220, and 18.130.040; adding a new section to chapter 70.128 RCW; creating a new section; repealing RCW 18.48.010, 18.48.020, 18.48.030, 18.48.050, and 18.48.060; and declaring an emergency.

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

**Sec. 1.** RCW 70.128.120 and 2001 c 319 s 8 are each amended to read as follows:

Each adult family home provider and each resident manager shall have the following minimum qualifications:

- (1) Twenty-one years of age or older;
- (2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:
  - (a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand

hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy in the English language, however, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842;  
and

(9) ~~((Registered with the department of health, and~~  
~~—(10)))~~ For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, at least three hundred twenty hours of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home.

**NEW SECTION. Sec. 2.** The following acts or parts of acts are each repealed:

(1) RCW 18.48.010 (Definitions) and 1996 c 81 s 2 & 1995 c 260 s 7;

(2) RCW 18.48.020 (Registration) and 2000 c 93 s 5, 1996 c 81 s 4, & 1995 c 260 s 8;

(3) RCW 18.48.030 (Application of uniform disciplinary act) and 1995 c 260 s 9;

(4) RCW 18.48.050 (Elder care—Professionalization of providers) and 1998 c 272 s 7; and

(5) RCW 18.48.060 (Advisory committee—Composition—Vacancies—Meetings—Travel expenses—Civil immunity) and 2000 c 171 s 18 & 1998 c 272 s 8.

**Sec. 3.** RCW 70.128.220 and 1998 c 272 s 9 are each amended to read as follows:

Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. The establishment of an advisory committee to the ~~((department of health and the))~~ department of social and health services under ~~((RCW 18.48.060))~~ section 4 of this act formalizes a stable process for discussing and considering these issues among residents and their advocates, regulatory officials, and adult family home providers. The dialogue among all stakeholders interested in maintaining a healthy option for the aging population in community settings assures the highest regard for the well-being of these residents within a benign and functional regulatory environment. The secretary shall be advised by an advisory committee on adult family homes established under ~~((RCW 18.48.060))~~ section 4 of this act.

~~((Establishment of the advisory committee shall not prohibit the department of social and health services from utilizing other advisory activities that the department of social and health services deems necessary for program development.))~~

**NEW SECTION. Sec. 4.** A new section is added to chapter 70.128 RCW to read as follows:

(1) In an effort to ensure a cooperative process among the department, adult family home provider representatives, and resident and family representatives on matters pertaining to the adult family home program, the secretary, or his or her designee, shall designate an advisory committee. The advisory committee must include: Representatives from the industry including four adult family home providers, at least two of whom are affiliated with recognized adult family home associations; one representative from the state long-term care ombudsman program; one representative from the statewide resident council program; and two representatives of families and other consumers. The secretary shall appoint a

chairperson for the committee from the committee membership for a term of one year. In appointing the chairperson, the secretary shall consult with members of the committee. Depending on the topic to be discussed, the department may invite other representatives in addition to the named members of the advisory committee. The secretary, or his or her designee, shall periodically, but not less than quarterly, convene a meeting of the advisory committee to encourage open dialogue on matters affecting the adult family home program. It is, minimally, expected that the department will discuss with the advisory committee the department's inspection, enforcement, and quality improvement activities, in addition to seeking their comments and recommendations on matters described under subsection (2) of this section.

(2) The secretary, or his or her designee, shall seek comments and recommendations from the advisory committee prior to the adoption of rules and standards, implementation of adult family home provider programs, or development of methods and rates of payment.

(3) Establishment of the advisory committee shall not prohibit the department of social and health services from utilizing other advisory activities that the department of social and health services deems necessary for program development.

(4) Members of the advisory committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 from license fees collected under chapter 70.128 RCW.

**NEW SECTION.** **Sec. 5.** The department of health shall return the funds collected by the department in connection with the power, functions, and duties repealed under section 2 of this act, less actual program costs, to credentialed adult family home providers and resident managers registered under chapter 18.48 RCW. The department of health shall determine the formula for distribution of these funds based upon payment of registration fees during the previous two renewal periods.

**Sec. 6.** RCW 18.130.040 and 2001 c 251 s 27 are each amended to read as follows:

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

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

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;

- (vii) Acupuncturists licensed under chapter 18.06 RCW;
  - (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
  - (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
  - (x) Persons registered under chapter 18.19 RCW;
  - (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
  - (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
  - (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
  - (xiv) Health care assistants certified under chapter 18.135 RCW;
  - (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
  - (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
  - (xvii) Sex offender treatment providers certified under chapter 18.155 RCW;
  - (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
  - (xix) ~~((Persons registered as adult family home providers and resident managers under RCW 18.48.020;~~
  - ~~—(xx))~~ Denturists licensed under chapter 18.30 RCW;
  - ~~((xxi))~~ (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
- and
- ~~((xxii))~~ (xxi) Surgical technologists registered under chapter 18.215 RCW.
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
  - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
  - (iii) The dental quality assurance commission as established in chapter 18.32 RCW;
  - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
  - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
  - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
  - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
  - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
  - (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
  - (x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;

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

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

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

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

**NEW SECTION. Sec. 7.** 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 March 13, 2002.

Passed the Senate March 13, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 224

[Engrossed Substitute House Bill 2453]

### PUBLIC INSPECTION EXEMPTIONS—VETERANS' RECORDS

AN ACT Relating to exemptions from public inspection; amending RCW 73.04.030; reenacting and amending RCW 42.17.310; creating a new section; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public,

so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft.

**Sec. 2.** RCW 42.17.310 and 2001 c 278 s 1, 2001 c 98 s 2, and 2001 c 70 s 1 are each reenacted and amended to read as follows:

(I) 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 or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing 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.

(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.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power

of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

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

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

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

**Sec. 3.** RCW 73.04.030 and 1989 c 50 s 1 are each amended to read as follows:

Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the discharge of any veteran of the armed forces of the United States who is residing in the state of Washington.

The department of veterans affairs, in consultation with the association of county auditors, shall develop and distribute to county auditors the form referred

to in RCW 42.17.310(1)(aaa) entitled "request for exemption from public disclosure of discharge papers."

The county auditor may charge a basic recording fee and preservation fee that together shall not exceed a total of seven dollars for the recording of the "request for exemption from public disclosure of discharge papers."

County auditors shall develop a form for requestors of military discharge papers (form DD214) to verify that the requestor is authorized to receive or view the military discharge paper.

NEW SECTION. Sec. 4. 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 March 11, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

**CHAPTER 225**

[House Bill 2501]

**CHIROPRACTIC CARE**

AN ACT Relating to chiropractic care; and amending RCW 18.25.005 and 18.25.006.

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

**Sec. I.** RCW 18.25.005 and 1994 sp.s. c 9 s 102 are each amended to read as follows:

(1) Chiropractic is the practice of health care (that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.

(2) Chiropractic treatment or care includes the use of procedures involving spinal adjustments, and extremity manipulation (~~(insofar as any such procedure is complementary or preparatory to a chiropractic spinal adjustment)~~). Chiropractic treatment also includes the use of heat, cold, water, exercise, massage, trigger point therapy, dietary advice and recommendation of nutritional supplementation (~~(except for medicines of herbal, animal, or botanical origin)~~), the normal regimen and rehabilitation of the patient, first aid, and counseling on hygiene, sanitation, and preventive measures. Chiropractic care also includes such physiological therapeutic procedures as traction and light, but does not include procedures involving the application of sound, diathermy, or electricity.

(3) As part of a chiropractic differential diagnosis, a chiropractor shall perform a physical examination, which may include diagnostic x-rays, to determine the appropriateness of chiropractic care or the need for referral to other health care providers. The chiropractic quality assurance commission shall provide by rule for

the type and use of diagnostic and analytical devices and procedures consistent with this chapter.

(4) Chiropractic care shall not include the prescription or dispensing of any medicine or drug, the practice of obstetrics or surgery, the use of x-rays or any other form of radiation for therapeutic purposes, colonic irrigation, or any form of venipuncture.

(5) Nothing in this chapter prohibits or restricts any other practitioner of a "health profession" defined in RCW 18.120.020(4) from performing any functions or procedures the practitioner is licensed or permitted to perform, and the term "chiropractic" as defined in this chapter shall not prohibit a practitioner licensed under chapter 18.71 RCW from performing medical procedures, except such procedures shall not include the adjustment by hand of any articulation of the spine.

**Sec. 2.** RCW 18.25.006 and 1994 sp.s. c 9 s 103 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 health.

(2) "Secretary" means the secretary of the department of health or the secretary's designee.

(3) "Chiropractor" means an individual licensed under this chapter.

(4) "Commission" means the Washington state chiropractic quality assurance commission.

(5) "Vertebral subluxation complex" means a functional defect or alteration of the biomechanical and physiological dynamics in a joint that may cause neuronal disturbances, with or without displacement detectable by x-ray. The effects of the vertebral subluxation complex may include, but are not limited to, any of the following: Fixation, hypomobility, hypermobility, periarticular muscle spasm, edema, or inflammation.

(6) "Articular dysfunction" means an alteration of the biomechanical and physiological dynamics of a joint of the axial or appendicular skeleton.

(7) "Musculoskeletal disorders" means abnormalities of the muscles, bones, and connective tissue.

(8) "Chiropractic differential diagnosis" means a diagnosis to determine the existence of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder, and the appropriateness of chiropractic care or the need for referral to other health care providers.

(9) "Chiropractic adjustment" means chiropractic care of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder. Such care includes manual or mechanical adjustment of any vertebral articulation and contiguous articulations beyond the normal passive physiological range of motion.

(10) "Extremity manipulation" means a corrective thrust or maneuver applied to a joint of the appendicular skeleton. ~~((The use of extremity manipulation shall~~

~~be complementary and preparatory to a chiropractic spinal adjustment to support correction of a vertebral subluxation complex and is considered a part of a spinal adjustment and shall not be billed separately from or in addition to a spinal adjustment:))~~

Passed the House March 11, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

**CHAPTER 226**

[Substitute House Bill 2513]

**TIMESHARE INTEREST RESERVATIONS**

AN ACT Relating to timeshare interest reservations; amending RCW 64.36.070; and adding a new section to chapter 64.36 RCW.

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

**Sec. 1.** RCW 64.36.070 and 1983 1st ex.s. c 22 s 8 are each amended to read as follows:

Any individual offering timeshare units or timeshare interest reservations for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 64.36 RCW to read as follows:

(1) For the purpose of this section, "timeshare interest reservation" means a revocable right to purchase an interest in a timeshare project for which construction has not yet been completed and an effective registration has been obtained under this chapter.

(2) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest reservation. Promoters offering a timeshare interest reservation under this section must provide the registered disclosure document required by RCW 64.36.140 to each prospective purchaser before he or she enters into a timeshare interest reservation. Prior to the signing of a purchase agreement, the subject property or properties must be completed, the timeshare offering registration required by RCW 64.36.020 must be amended to reflect any changes to the property and must be reapproved by the department, the disclosure document required by RCW 64.36.140 must be revised, and the new version of the disclosure document must be provided to the prospective purchaser.



(3) Deposits accepted by promoters on a timeshare interest reservation may be no more than twenty percent of the total purchase price of the timeshare interest that is being purchased. Within one business day after being accepted by the promoter, any deposit on a timeshare interest reservation shall be deposited in an account in a federally insured depository located in the state of Washington. This account must be an escrow account wherein the deposited funds are held for the benefit of the purchaser. The department may request that deposits be placed in impoundment under RCW 64.36.130.

(4) In addition to the cancellation rights provided in RCW 64.36.150, the purchaser has the right to cancel the purchase at any time before the signing of a purchase agreement. If the purchaser notifies the promoter that he or she wishes to cancel the timeshare interest reservation, the promoter must refund the full amount of the deposit minus any account fees within ten days of the notice.

(5) If prior to signing a purchase agreement the purchaser learns that the promoter proposes to raise the purchase price above the price agreed to in the written reservation agreement for the timeshare interest reservation, the written reservation agreement is void and all deposit moneys including account fees shall be returned to the purchaser within ten days after the purchaser learns of the proposed price increase.

(6) If the promoter charges account fees to pay for administrative costs of holding the purchaser's funds in escrow, these fees may be no more than one percent of the total deposit paid towards the timeshare interest reservation by the purchaser.

(7) The promoter shall provide instructions to the escrow company for release of the funds to be held in escrow in compliance with this section and rules of the department.

(8) The purchaser's right to cancel and the amount of the deposit proposed to be retained for account fees in the event of cancellation must be included in the contract for the sale of a timeshare interest reservation and the contract must state:

#### PURCHASER CANCELLATION RIGHTS

As a purchaser of a timeshare interest reservation, you have the right to cancel this timeshare interest reservation and receive a refund of all consideration paid (less only those account fee deductions which were fully disclosed at the time of the agreement) by providing written notice of the cancellation to the promoter or the promoter's agent at any time prior to signing a purchase agreement. You also have a right to cancel your purchase within seven days of signing a purchase agreement.

(9) If it appears that the timeshare project will become or does become insolvent prior to completion, the promoter shall instruct the escrow company to immediately return all deposits to purchasers of timeshare interest reservations. If funds are returned under this subsection, the promoter may not retain any portion of the deposits for account fees.

Passed the House February 15, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 227

[House Bill 2550]

### INSURANCE COMMISSIONER—LICENSE APPLICATIONS

AN ACT Relating to the process of applying for a license or solicitation permit from the insurance commissioner; amending RCW 48.06.040, 48.17.090, 48.15.070, 48.56.030, and 48.102.015; and declaring an emergency.

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

**Sec. I.** RCW 48.06.040 and 1967 c 150 s 6 are each amended to read as follows:

To apply for a solicitation permit the person shall:

- (1) File with the commissioner a request (~~((therefor))~~) showing((:));
  - (a) Name, type, and purpose of insurer, corporation, or syndicate proposed to be formed;
  - (b) Names, addresses, fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, and business records of each person associated or to be associated in the formation of the proposed insurer, corporation, or syndicate;
  - (c) Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the proposed insurer, corporation, or syndicate, or the formation thereof;
  - (d) The plan according to which solicitations are to be made; and
  - (e) (~~((such))~~) Additional information as the commissioner may reasonably require.
- (2) File with the commissioner((:));
  - (a) Original and copies in triplicate of proposed articles of incorporation, or syndicate agreement; or, if the proposed insurer is a reciprocal, original and duplicate of the proposed subscribers' agreement and attorney in fact agreement;
  - (b) Original and duplicate copy of any proposed bylaws;
  - (c) Copy of any security proposed to be issued and copy of application or subscription agreement (~~((therefor))~~) for that security;
  - (d) Copy of any insurance contract proposed to be offered and copy of application (~~((therefor))~~) for that contract;
  - (e) Copy of any prospectus, advertising, or literature proposed to be used; and
  - (f) Copy of proposed form of any escrow agreement required.
- (3) Deposit with the commissioner the fees required by law to be paid for the application including fees associated with the state and national criminal history background check, for filing of the articles of incorporation of an insurer, for filing

the subscribers' agreement and attorney in fact agreement if the proposed insurer is a reciprocal, for the solicitation permit, if granted, and for filing articles of incorporation with the secretary of state.

**Sec. 2.** RCW 48.17.090 and 2001 c 56 s 1 are each amended to read as follows:

(1) Application for ~~((any such))~~ a license to be an agent, broker, solicitor, or adjuster shall be made to the commissioner upon forms ~~((as prescribed and))~~ furnished by the commissioner. As a part of or in connection with any such application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business 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) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of 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. 3.** RCW 48.15.070 and 1994 c 131 s 3 are each amended to read as follows:

Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require.

(2) The license shall expire if not timely renewed. Surplus line brokers licenses shall be valid for the time period established by the ~~((commission))~~ commissioner unless suspended or revoked at an earlier date.

(3) Prior to issuance of license the applicant shall file with the commissioner a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that he or she will conduct business under the license in accordance with the provisions of this chapter and that he or she will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(4) Every applicant for a surplus line broker's license or for the renewal of a surplus line broker's license shall file with the application or request for renewal a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of one hundred thousand dollars and shall be the bonding requirement for new licensees. The licensee shall maintain such bond in force while so licensed. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the amount stated in the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting such broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(5) Any bond issued pursuant to subsection (3) or (4) of this section shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days' advance notice in writing filed with the commissioner.

(6) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(7) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker.

**Sec. 4.** RCW 48.56.030 and 1969 ex.s. c 190 s 3 are each amended to read as follows:

(1) No person shall engage in the business of financing insurance premiums in the state without first having obtained a license as a premium finance company from the commissioner. Any person who shall engage in the business of financing insurance premiums in the state without obtaining a license as provided hereunder

shall, upon conviction, be guilty of a misdemeanor and shall be subject to the penalties provided in this chapter.

(2)(a) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant and, at the commissioner's discretion, any or all stockholders, directors, partners, officers, and employees of the business shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require.

(b) The annual license fee shall be one hundred dollars. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee of one hundred dollars. The fee for ~~((said))~~ the license shall be paid to the insurance commissioner.

(3) The person to whom the license or the renewal ~~((thereof))~~ may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant ~~((fully))~~ to disclose fully the identity of all stockholders, directors, partners, officers, and employees and ~~((he))~~ may, in his or her discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he ~~((is not satisfied))~~ or she finds that any officer, employee, stockholder, or partner ~~((thereof))~~ who may materially influence the applicant's conduct ~~((meets))~~ does not meet the standards of this chapter.

(4) This section shall not apply to any savings and loan association, bank, trust company, ~~((small loan company;))~~ consumer loan company, industrial loan company or credit union authorized to do business in this state but RCW 48.56.080 through 48.56.130 and any rules ~~((promulgated))~~ adopted by the commissioner pertaining to such sections shall be applicable to such organizations, if otherwise eligible, under all premium finance transactions wherein an insurance policy, other than a life or disability insurance policy, or any rights thereunder is made the security or collateral for the repayment of the debt, however, neither this section nor the provisions of this chapter shall be applicable to the inclusion of insurance in a retail installment transaction or to insurance purchased in connection with a real estate transaction, mortgage, deed of trust, or other security instrument or an insurance company authorized to do business in this state unless the insurance company elects to become a licensee.

(5) If in the process of verifying fingerprints under subsection (2) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

**Sec. 5.** RCW 48.102.015 and 1995 c 161 s 3 are each amended to read as follows:

(1) The commissioner may suspend, revoke, or refuse to issue or renew the license of any viatical settlement broker or viatical settlement provider if the commissioner finds that:

(a) There was any misrepresentation, intentional or otherwise, in the application for the license or for renewal of a license;

(b) The applicant for, or holder of any such license, is or has been subject to a final administrative action for being, or is otherwise shown to be, untrustworthy or incompetent to act as either a viatical settlement broker or a viatical settlement provider;

(c) The applicant for, or holder of any such license, demonstrates a pattern of unreasonable payments to viators;

(d) The applicant for, or holder of any such license, has been convicted of a felony or of any criminal misdemeanor of which criminal fraud is an element; or

(e) The applicant for, or holder of any such license, has violated any provision of this title.

(2) The commissioner may (~~from time to time~~) require an applicant or the holder of any license issued under this chapter to supply current information on the identity or capacity of stockholders, partners, officers, and employees, including but not limited to the following: Fingerprints, personal history, business experience, business records, and any other information which the commissioner may require. If required, the applicant or licensee shall furnish his or her fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check.

(3) Before the commissioner suspends or revokes any license issued under this chapter, (~~or refuses to issue any such license,~~) the commissioner shall conduct a hearing, if the applicant or licensee requests this in writing. The hearing shall be in accordance with chapters 34.05 and 48.04 RCW.

(4) After a hearing or with the consent of any party licensed under this chapter and in addition to or in lieu of the suspension, revocation, or refusal to renew any license under this chapter, the commissioner may levy a fine upon the viatical settlement provider in an amount not more than ten thousand dollars, for each violation of this chapter. The order levying the fine shall specify the period within which the fine shall be fully paid, and that period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due, the commissioner may revoke the license if not already revoked, and the fine may be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be deposited into the general fund.

(5) If in the process of verifying fingerprints under subsection (2) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the

amount of the fees or charges shall be paid to the commissioner's office by the applicant or licensee.

**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 February 14, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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## CHAPTER 228

[House Bill 2570]

### FORESTS AND FISH REPORT—FEDERAL ASSURANCES

AN ACT Relating to extending the time period for federal assurances related to the forests and fish report; and amending RCW 77.85.190.

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

**Sec. 1.** RCW 77.85.190 and 1999 sp.s. c 4 s 1301 are each amended to read as follows:

(1) Chapter 4, Laws of 1999 sp. sess. has been enacted on the assumption that the federal assurances described in the forests and fish report as defined in RCW 76.09.020 will be obtained and that forest practices conducted in accordance with chapter 4, Laws of 1999 sp. sess. and the rules adopted under chapter 4, Laws of 1999 sp. sess. will not be subject to additional regulations or restrictions for aquatic resources except as provided in the forests and fish report.

(2) The occurrence of any of the following events shall constitute a failure of assurances:

(a) Either (i) the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering each aquatic resource that is listed as threatened under the endangered species act within two years after the date on which the aquatic resource is so listed or, in the case of bull trout, within two years after August 18, 1999; or (ii) any such rule fails to permit any incidental take that would occur from the conduct of forest practices in compliance with the rules adopted under chapter 4, Laws of 1999 sp. sess. or fails to confirm that such forest practices would not otherwise be in violation of the endangered species act and the regulations promulgated under that act. However, this subsection (2)(a) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(b) Either the national marine fisheries service or the United States fish and wildlife service shall promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would preclude the conduct of forest practices consistent with the prescriptions outlined in the forests and fish report. However,

this subsection (2)(b) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(c) Either the secretary of the interior or the secretary of commerce fails to issue an acceptable incidental take permit under 16 U.S.C. Sec. 1539(a) covering all fish and wildlife species included within aquatic resources on or before June 30, ((2003)) 2005. An acceptable incidental take permit will (i) permit the incidental take, if any, of all fish and wildlife species included within aquatic resources resulting from the conduct of forest practices in compliance with the prescriptions outlined in the forests and fish report; (ii) provide protection to the state of Washington and its subdivisions and to landowners and operators; (iii) not require the commitment of additional resources beyond those required to be committed under the forests and fish report; and (iv) provide "no-surprises" protection as described in 50 C.F.R. Parts 17 and 222 (1998);

(d) Either the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) within five years after the date on which a fish species is listed as threatened or endangered under the endangered species act which prohibits actions listed under 16 U.S.C. 1538;

(e) The environmental protection agency or department of ecology fails to provide the clean water act assurances described in appendix M to the forests and fish report; or

(f) The assurances described in (a) through (e) of this subsection are reversed or otherwise rendered ineffective by subsequent federal legislation or rule making or by final decision of any court of competent jurisdiction.

Upon the occurrence of a failure of assurances, any agency, tribe, or other interested person including, without limitation, any forest landowner, may provide written notice of the occurrence of such failure of assurances to the legislature and to the office of the governor. Promptly upon receipt of such a notice, the governor shall review relevant information and if he or she determines that a failure of assurances has occurred, the governor shall make such a finding in a written report with recommendations and deliver such report to the legislature. Upon notice of the occurrence of a failure of assurances, the legislature shall review chapter 4, Laws of 1999 sp. sess., all rules adopted by the forest practices board, the department of ecology, or the department of fish and wildlife at any time after January 1, 1999, that were adopted primarily for the protection of one or more aquatic resources and affect forest practices and the terms of the forests and fish report, and shall take such action, including the termination of funding or the modification of other statutes, as it deems appropriate.

(3) The governor may negotiate with federal officials, directly or through designated representatives, on behalf of the state and its agencies and subdivisions, to obtain assurances from federal agencies to the effect that compliance with the forest practices rules as amended under chapter 4, Laws of 1999 sp. sess. and implementation of the recommendations in the forests and fish report will satisfy



federal requirements under the endangered species act and the clean water act and related regulations, including the negotiation of a rule adopted under section 4(d) of the endangered species act, entering into implementation agreements and receiving incidental take permits under section 10 of the endangered species act or entering into other intergovernmental agreements.

(4)(a) It is expressly understood that the state will pursue a rule delineating federal assurances under 16 U.S.C. Sec. 1533(d) and may concurrently develop a Sec. 10(a) habitat conservation plan by June 2005. The department of natural resources must report regularly to the house of representatives and senate natural resources committees on the progress of the program, and on any technical or legal issues that may arise.

(b) The forest and fish agreement as embodied in chapter 4, Laws of 1999 sp. sess. and this chapter, the rules adopted by the forest practices board to implement this chapter, and all protections for small forest landowners, are reaffirmed as part of the extension of time granted in this act and will be collectively included in the federal assurances sought by the state of Washington.

Passed the House March 9, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 229

[Substitute House Bill 2610]

### ENDANGERMENT WITH A CONTROLLED SUBSTANCE

AN ACT Relating to endangerment of children and dependent persons with a controlled substance; amending RCW 43.43.830; reenacting and amending RCW 9.94A.515; adding a new section to chapter 9A.42 RCW; prescribing penalties; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.42 RCW to read as follows:

A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, that are being used in the manufacture of methamphetamine. Endangerment with a controlled substance is a class B felony.

**Sec. 2.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s 4, 2001 c 217 s 12, and 2001 c 17 s 1 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)  
          Sexually Violent Predator Escape (RCW  
                  9A.76.115)
- 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))
- 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 9A.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(3)(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(3)(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))
- Endangerment with a Controlled Substance (section 1 of this act)
- 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, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)  
 Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)  
 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)
- 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 I (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. 3.** RCW 43.43.830 and 1999 c 45 s 5 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults; or

(c) Any prospective adoptive parent, as defined in RCW 26.33.020.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court

findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respondent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnaping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;

- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;
- (k) Registered nursing; and
- (l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(9) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(10) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults.

**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 March 13, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 230

[Engrossed House Bill 2623]

### SHORELINE MANAGEMENT ACT—DOLLAR THRESHOLD

AN ACT Relating to adjusting the dollar threshold for substantial development under the shoreline management act; amending RCW 90.58.030; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis.

**Sec. 2.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

- (a) "Department" means the department of ecology;
- (b) "Director" means the director of the department of ecology;
- (c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
- (d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;
- (e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines

on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although

not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "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 for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds ~~((two))~~ five thousand ~~((five hundred))~~ dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state ~~((except that))~~. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled

by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

**CHAPTER 231**

[Substitute House Bill 2673]

**FIRE-FIGHTING APPARATUS—WEIGHT RESTRICTIONS**

AN ACT Relating to weight limits on fire-fighting apparatus; amending RCW 46.44.190; and prescribing penalties.

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

**Sec. 1.** RCW 46.44.190 and 2001 c 262 s 3 are each amended to read as follows:

(1) As used in this section, "fire-fighting apparatus" means a vehicle or combination of vehicles, owned by a regularly organized fire suppression agency, designed, maintained, and used exclusively for fire suppression and rescue or for fire prevention activities. These vehicles and associated loads or equipment are



necessary to protect the public safety and are considered nondivisible loads. A vehicle or combination of vehicles that is not designed primarily for fire suppression including, but not limited to, a hazardous materials response vehicle, bus, mobile kitchen, mobile sanitation facility, and heavy equipment transport vehicle is not a fire-fighting apparatus for purposes of this section.

(2) Fire-fighting apparatus must comply with all applicable federal and state vehicle operating and safety criteria, including rules adopted by agencies within each jurisdiction.

(3) All owners and operators of fire-fighting apparatus shall comply with current information, (~~(available through)~~) provided by the department, regarding the applicable load restrictions of state and local bridges within the designated fire service area, including any automatic or mutual aid agreement areas.

(4) Fire-fighting apparatus operating within a fire district or municipal department boundary of the owner of the apparatus, including any automatic or mutual aid agreement areas, may operate without a permit if:

(a) The weight does not exceed:

(i) 600 pounds per inch width of tire;

(ii) 24,000 pounds on a single axle;

(iii) 43,000 pounds on a tandem axle set;

(iv) 67,000 pounds gross vehicle weight, subject to the gross weight limits of RCW 46.44.091(1) (c), (d), and (e);

(v) The tire manufacturer's tire load rating.

(b) There is no tridem axle set.

(c) The dimensions do not exceed:

(i) 8 feet, 6 inches wide;

(ii) 14 feet high;

(iii) 50 feet overall length;

(iv) 15 foot front overhang;

(v) Rear overhang not exceeding the length of the wheel base.

(5) Operators of fire-fighting apparatus that exceed the weight limits in subsection (4) of this section must apply for an overweight permit with the department (~~may grant permits for fire fighting apparatus that exceed the weight limits in subsection (4) of this section only if they were put into operation in this state before July 1, 2001~~). The maximum weight a fire-fighting apparatus may weigh is 50,000 pounds on the tandem axle set, and may not exceed 600 pounds per inch width of tire. The maximum weight limit must include the weight of a full water tank, if applicable, all equipment necessary for operation, and the normal number of personnel usually assigned to be on board, or four personnel, whichever is greater. At least four personnel must be physically present at the time the apparatus is weighed.

(6) When applying for a permit, a current weight slip from a certified scale must be attached to the department's application form. Upon receiving an application, the department shall transmit it to the local jurisdictions in which the

fire-fighting apparatus will be operating, so that the local jurisdictions can make a determination on the need for local travel and route restrictions within the operating area. The department shall issue a permit within twenty days of receiving a permit application and shall issue the permit on an annual basis for the apparatus to operate ((within the designated fire service area, including mutual benefit agreement areas, subject to the)) on the state highway system, with reference made to applicable load restrictions ((of state bridges referred to in subsection (3) of this section)) and any other limitations stipulated on the permit, including limitations placed by local jurisdictions. ((Before issuing a permit, the department will compare the apparatus to be permitted with the bridge load ratings for structures on state highways within the operating area. The permit will denote any structures where access by the apparatus is either based on special operating instructions or is denied:))

(7) Fire-fighting apparatus in operation in this state before the effective date of this act, and privately owned industrial fire-fighting apparatus used for purposes of providing emergency response and mutual aid are each exempt from subsections (4) and (5) of this section. However, operators of the exempt fire-fighting apparatus must still obtain an annual permit under subsection (6) of this section.

(8) Fire-fighting apparatus without the proper overweight permits are prohibited from being operated on city, county, or state roadways until the apparatus is within legal weight limits and a current permit has been issued by the department. When the permit is issued, the fire district must notify the Washington state patrol that the apparatus is in compliance with overweight permit regulations.

(9) The Washington state patrol may conduct random spot checks of fire-fighting apparatus to ensure compliance with overweight permit regulations. If a fire-fighting apparatus is found to be not in compliance with overweight permit regulations, the state patrol shall issue a violation notice to the fire department stating this fact and prohibiting operation of the apparatus on city, county, and state roadways.

(10) It is a traffic infraction to continue to operate a fire-fighting apparatus on the roadways after a violation notice has been issued. The following penalties apply:

(a) For a first offense, the penalty will be no less than fifty dollars but no more than fifty dollars;

(b) For a second offense, the penalty will be no less than seventy-five dollars;

(c) For a third or subsequent offense, the penalty will be no less than one hundred dollars.

(11) No individual liability attaches to an employee or volunteer of the penalized fire department.

Passed the House February 14, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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## CHAPTER 232

[Substitute House Bill 2699]

### COMMUNICATIONS WITH GOVERNMENT AGENCIES—IMMUNITY

AN ACT Relating to communications with government branches or agencies and self-regulatory organizations; amending RCW 4.24.510; and creating a new section.

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

**NEW SECTION.** **Sec. 1.** Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. This bill amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.

**Sec. 2.** RCW 4.24.510 and 1999 c 54 s 1 are each amended to read as follows:

A person who (~~in good faith~~) communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section (~~shall be~~) is entitled to recover (~~costs~~) expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

Passed the House March 11, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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**CHAPTER 233**

[Engrossed Substitute House Bill 2707]

**LONG-TERM CAREGIVER TRAINING**

AN ACT Relating to long-term caregiver training; amending RCW 18.20.270, 70.128.230, and 74.39A.190; adding a new section to chapter 43.20A RCW; and declaring an emergency.

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

**Sec. I.** RCW 18.20.270 and 2000 c 121 s 2 are each amended to read as follows:

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

(a) "Caregiver" includes any person who provides residents with hands-on personal care on behalf of a boarding home, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All boarding home employees or volunteers who routinely interact with residents shall complete orientation. Boarding home administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate boarding home staff to all boarding home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of ~~((March))~~ September 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision. Boarding home administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of

employment or within one hundred twenty days of (~~(March)~~) September 1, 2002, whichever is later.

(5) For boarding homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers. Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs or within one hundred twenty days of (~~(March)~~) September 1, 2002, whichever is later. However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision. Boarding home administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days of (~~(March)~~) September 1, 2002, or one hundred twenty days from the date on which the administrator or his or her designee is hired, whichever is later, if the boarding home serves one or more residents with special needs.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required (~~(during the first)~~) in the same calendar year ((following completion of the)) in which basic ((training)) or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology

coordinated through community colleges or other entities, as defined by the department.

(10) The ~~((community long-term care training and education steering committee established under RCW 74.39A.190))~~ department shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(11) Boarding homes that desire to deliver facility-based training with facility designated trainers, or boarding homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The ~~((community long-term care training and education steering committee))~~ department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the ~~((steering committee))~~ department. The department may approve a curriculum based upon attestation by a boarding home administrator that the boarding home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled yearly inspection and investigation required under RCW 18.20.110. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(12) The department shall adopt rules by ~~((March))~~ September 1, 2002, for the implementation of this section ~~((based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190))~~.

(13) The orientation, basic training, specialty training, and continuing education requirements of this section ~~((take effect March))~~ commence September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and shall be applied ((prospectively)) to (a) employees hired subsequent to September 1, 2002; and (b) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 shall be subject to all applicable requirements of this section. However, prior to September 1, 2002, nothing in this section affects the current training requirements under RCW 74.39A.010.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.20A RCW to read as follows:

The department shall publish its final basic and specialty training competencies and learning outcomes as required by chapter 121, Laws of 2000 no later than June 1, 2002.

**Sec. 3.** RCW 70.128.230 and 2000 c 121 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) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of (~~March~~) September 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers. Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents.

Competency testing is not required for continuing education. Continuing education is not required ~~((during the first)) in the same calendar year ((following completion of the)) in which~~ basic ~~((training))~~ or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. ~~The ((community long-term care training and education steering committee))~~ department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by ~~((March))~~ September 1, 2002, for the implementation of this section ~~((based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190)).~~

(12) The orientation, basic training, specialty training, and continuing education requirements of this section ~~((take effect March))~~ commence September 1, 2002, and shall be applied ((prospectively)) to (a) employees hired subsequent to September 1, 2002; or (b) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully



completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130.

**Sec. 4.** RCW 74.39A.190 and 2000 c 121 s 8 are each amended to read as follows:

(1) The secretary shall appoint a steering committee for community long-term care training and education to advise the department on the development ~~((and approval))~~ of criteria for training materials, the development of competency tests, the development of criteria for trainers, and the development of exemptions from training. The community long-term care training and education steering committee shall also review the effectiveness of the training program or programs, including the qualifications and availability of the trainers. ~~((The steering committee shall also review the appropriateness of the adopted rules implementing this section.))~~ The steering committee shall advise the department on flexible and innovative learning strategies that accomplish the training goals, such as competency and outcome-based models and distance learning. The steering committee shall review and recommend the most appropriate length of time between an employee's date of first hire and the start of the employee's basic training.

(2) The steering committee shall, at a minimum, consist of a representative from each of the following: Each of the statewide boarding home associations, two adult family home associations, each of the statewide home care associations, the long-term care ombudsman program, the area agencies on aging, the department of health representing the nursing care quality assurance commission, and a consumer, or their nonprovider designee, from a boarding home, adult family home, home care served by an agency, and home care served by an individual provider. A majority of the members currently serving constitute a quorum.

(3) Nothing in this chapter shall prevent the adult family home advisory committee from enhancing training requirements for adult family providers and resident managers, regulated under chapter 18.48 RCW, at the cost of those providers and resident managers.

(4) Establishment of the steering committee does not prohibit the department from utilizing other advisory activities that the department deems necessary for program development. However, when the department obtains input from other advisory sources, the department shall present the information to the steering committee for their review ~~((and approval))~~.

(5) Each member of the steering committee shall serve without compensation. Consumer representatives may be reimbursed for travel expenses as authorized in RCW 43.03.060.

(6) The steering committee recommendations must implement the intent of RCW 74.39A.050(14) to create training that includes skills and competencies that are transferable to nursing assistant training.

(7) The steering committee shall cease to exist ~~((on))~~ July 1, ~~((2004))~~ 2003.

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 March 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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**CHAPTER 234**

[Engrossed House Bill 2748]

**HIGHLY CAPABLE STUDENTS**

AN ACT Relating to monitoring programs for the education of highly capable students; and adding a new section to chapter 28A.185 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.185 RCW to read as follows:

In order to ensure that school districts are meeting the requirements of an approved program for highly capable students, the superintendent of public instruction shall monitor highly capable programs at least once every five years. Monitoring shall begin during the 2002-03 school year.

Any program review and monitoring under this section may be conducted concurrently with other program reviews and monitoring conducted by the office of the superintendent of public instruction. In its review, the office shall monitor program components that include but need not be limited to the process used by the district to identify and reach out to highly capable students with diverse talents and from diverse backgrounds, assessment data and other indicators to determine how well the district is meeting the academic needs of highly capable students, and district expenditures used to enrich or expand opportunities for these students.

Beginning June 30, 2003, and every five years thereafter, the office of the superintendent of public instruction shall submit a report to the education committees of the house of representatives and the senate that provides a brief description of the various instructional programs offered to highly capable students.

The superintendent of public instruction may adopt rules under chapter 34.05 RCW to implement this section.

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 235

[Engrossed House Bill 2773]

## FRUIT SALES—MARKETING INFORMATION

AN ACT Relating to sales of fruit; adding a new section to chapter 42.17 RCW; creating new sections; and providing an expiration date.

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

**NEW SECTION.** **Sec. 1.** To provide uniformity in the marketplace and to protect consignors of apples, the existing state standards for grades and packs of apples shall be evaluated. Revision of the standards for grades and packs of apples that will clarify the standards in such a way that they will be applied consistently among warehouses and commission merchants shall be evaluated. The evaluation must consider the appropriate level of uniformity that will ensure that the apples of a particular variety, grade, and pack sold from one warehouse will be equivalent to the apples of the same variety, grade, and pack sold from other warehouses.

For this purpose, the director shall convene an apple grades and packs committee that is widely recognized within the horticultural industry as representing the interests of the industry to recommend by consensus revisions to the standards that it believes will provide the desired level of uniformity that best serves the interest of apple producers, packers, and consumers.

If the industry committee recommends such revisions by consensus by December 15, 2003, the director shall give great weight to the recommendations in proposing the adoption of rules that reflect the consensus recommendations.

If the apple grades and packs committee does not make recommendations by consensus by December 15, 2003, the committee shall report its findings and conclusions to the department of agriculture, and to appropriate legislative committees that have jurisdiction over agricultural issues at meetings scheduled during the next ensuing regular session of the legislature. The appropriate legislative committees may monitor the activities of the apple grades and packs committee and may schedule interim committee meetings to obtain progress reports by the apple grades and packs committee.

This section expires April 30, 2004.

**NEW SECTION.** **Sec. 2.** The legislature finds that consignors of fruit, whether the sale is conducted as individual sales or in a pooling arrangement, need timely and more complete marketing information regarding terms of sale for various varieties of fruit so that producers can make informed business decisions. The legislature finds that the affected industry needs to review the type of information that is currently available, the type of information that would be useful, and how best to make available the additional information.

The legislature requests that the Washington state horticultural association, the Wenatchee valley traffic association, the Yakima valley growers and shippers association, and the Washington growers clearinghouse association meet with each other to conduct a thorough analysis of the marketing information needs of the industry and provide recommendations to the legislature on how the market

information needs can best be addressed. The legislature requests that these groups develop a joint report containing those items to improve the availability of market information for which agreement has been attained. On issues for which consensus has not been reached, each organization is requested to provide a brief statement containing the perspective of that industry segment. The legislature requests that these reports shall be completed by December 15, 2003, with a copy to be delivered to the director of the department of agriculture and to the appropriate standing committees of the senate and the house of representatives with jurisdiction over agricultural issues. These legislative committees may schedule interim committee meetings to obtain progress reports for activities being conducted under this section.

**NEW SECTION. Sec. 3.** (1) Each commission merchant that received apples imported into the United States between January 1, 2002, and November 30, 2002, shall report to the department of agriculture by December 15, 2002. The report shall include the volume of each variety of imported apples that was received by and packed and sold by the commission merchant.

(2) The department of agriculture shall compile the information, in the aggregate, and provide a report to the secretary of the senate and the chief clerk of the house of representatives by December 31, 2002.

**NEW SECTION. Sec. 4.** A new section is added to chapter 42.17 RCW to read as follows:

The disclosure requirements of this chapter do not apply to information that can be identified to a particular business and that is collected under section 3(1), chapter . . ., Laws of 2002 (section 3(1) of this act).

Passed the House March 11, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 236

[Substitute House Bill 2893]

### EQUIPMENT DEALERS

AN ACT Relating to equipment dealers; amending RCW 19.98.010, 19.98.020, 19.98.030, 19.98.040, 19.98.100, 19.98.120, and 19.98.130; adding new sections to chapter 19.98 RCW; and repealing RCW 19.98.110.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 19.98 RCW to read as follows:

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

(1) "Audit" means a review by a supplier of a dealer's warranty claims records.

(2) "Change in competitive circumstances" means to materially impact a specific dealer's ability to compete with similarly situated dealers selling the same brand of equipment.

(3) "Current net price" means the price charged to a dealer for repair parts as listed in the printed price list, catalog, or electronic catalog of the supplier in effect at the time a warranty claim is made and superseded parts listed in current price lists, catalogs, or electronic catalogs when parts had previously been purchased from the supplier and held by the dealer on the date of the cancellation or discontinuance of a dealer agreement or thereafter received by the dealer from the supplier.

(4) "Dealer" means a person primarily engaged in the retail sale and service of farm equipment, including a person engaged in the retail sale of outdoor power equipment who is primarily engaged in the retail sale and service of farm equipment. Dealer does not include a person primarily engaged in the retail sale of outdoor power equipment or a supplier.

(5) "Dealer agreement" means an oral or written contract or agreement for a definite or indefinite period of time in which a supplier of equipment grants to a dealer permission to use a trade name, service mark, or related characteristic, and where there is a community of interest in the marketing of equipment or services related to the equipment at wholesale, retail, leasing, or otherwise.

(6) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement.

(7) "Distributor" means a person who sells or distributes new equipment to dealers or who maintains distributor representatives within the state.

(8) "Distributor branch" means a branch office, maintained by a distributor, that sells or distributes new equipment to dealers. "Distributor branch" includes representatives of the branch office.

(9)(a) "Equipment" includes:

(i) Farm equipment. Farm equipment includes but is not limited to tractors, trailers, combines, tillage implements, balers, and other equipment, including attachments and accessories that are used in the planting, cultivating, irrigation, harvesting, and marketing of agricultural, horticultural, or livestock products.

(ii) Outdoor power equipment. Outdoor power equipment includes self-propelled equipment that is used to maintain commercial, public, or residential lawns and gardens or used in landscape, turf, or golf course maintenance.

(b) "Equipment" does not include motor vehicles designed or intended for use upon public roadways as defined in RCW 46.70.011 or motorcycles as defined in RCW 46.94.010.

(10) "Factory branch" means a branch office maintained by a manufacturer that makes or assembles equipment for sale to distributors or dealers or that is maintained for directing and supervising the representatives of the manufacturer.

(11) "Factory representative" means a person employed by a manufacturer or by a factory branch for the purpose of selling or promoting the sale of equipment

or for supervising, servicing, instructing, or contracting with dealers or prospective dealers.

(12) "Free on board" or "F.O.B." has the same meaning as described in RCW 62A.2-319.

(13) "Geographic market area" means the geographic region for which a particular dealer is responsible for the marketing, selling, leasing, or servicing of equipment pursuant to a dealer agreement.

(14) "Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated dealer in the state either by their terms or in the manner of their enforcement.

(15) "Manufacturer" means a person engaged in the business of manufacturing or assembling new and unused equipment.

(16) "Person" includes a natural person, corporation, partnership, trust, or other entity, including any other entity in which it has a majority interest or of which it has control, as well as the individual officers, directors, or other persons in active control of the activities of each entity.

(17) "Similarly situated dealer" means a dealer of comparable geographic location, volume, and market type.

(18) "Supplier" means a person or other entity engaged in the manufacturing, assembly, or wholesale distribution of equipment or repair parts of the equipment. "Supplier" includes any successor in interest, including a purchaser of assets, stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of the original supplier, or any receiver or any trustee of the original supplier.

(19) "Warranty claim" means a claim for payment submitted by a dealer to a supplier for either service, or parts, or both, provided to a customer under a warranty issued by the supplier.

(20) "Wholesaler" means a person who sells or attempts to sell new equipment exclusively to dealers or to other wholesalers.

**Sec. 2.** RCW 19.98.010 and 1975 1st ex.s. c 277 s 1 are each amended to read as follows:

Whenever any person, firm, or corporation engaged in the ~~((retail))~~ sale of ~~((farm implements and))~~ equipment, repair parts, or services therefor enters into a written or oral contract with ~~((any wholesaler, manufacturer, or distributor))~~ a supplier of ~~((farm implements, machinery, attachments, accessories))~~ equipment, or repair parts whereby ~~((such retailer))~~ the dealer agrees to maintain a stock of parts ~~((or complete or whole machines, attachments, or accessories,))~~ and equipment and either party to such contract desires to cancel or discontinue the contract, unless the ~~((retailer))~~ dealer should desire to keep such ~~((merchandise))~~ parts and equipment the ~~((manufacturer, wholesaler, or distributor))~~ supplier shall pay the ~~((retailer))~~ dealer for the ~~((merchandise. Such))~~ equipment and reasonable reimbursement for services performed in connection with assembly and predelivery inspections of the equipment. The payment shall be in the amount of one hundred

percent of the net cost of all ~~((current))~~ unused complete ~~((farm implements, machinery, attachments, and accessories))~~ equipment, including transportation charges paid by the ~~((retailer, and eighty-five))~~ dealer. Equipment purchased more than twenty-four months prior to the cancellation or discontinuance of the dealer agreement is subject to a weather allowance adjustment. The supplier assumes ownership of new unused complete equipment F.O.B. the dealer location. The supplier shall pay the dealer in the amount of ninety-five percent of the current net prices on repair parts, including superseded parts listed in current price lists ((or)), catalogs, or electronic catalogs which parts had previously been purchased from ((such wholesaler, manufacturer, or distributor)) the supplier and held by ((such retailer)) the dealer on the date of the cancellation or discontinuance of such contract or thereafter received by ((such retailer)) the dealer from the ((wholesaler, manufacturer, or distributor)) supplier. The ((wholesaler, manufacturer, or distributor)) supplier shall also pay ((such retailer)) the dealer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return((- PROVIDED, That)), unless the supplier elects to catalog or list the inventory and perform packing and loading of the parts itself. However, the provisions of this section shall apply only to repair parts which are new, unused, and in ((good)) resalable condition. The provisions of this section do not apply to repair parts that were purchased by the dealer in sets of multiple parts unless the sets are complete and in resalable condition, or to parts the supplier can demonstrate were identified as nonreturnable when ordered by the dealer.

Upon the payment of such amounts, the title to ~~((such farm implements, farm machinery, attachments, accessories,))~~ the equipment or repair parts~~((;))~~ shall pass to the ~~((manufacturer, wholesaler, or distributor))~~ supplier making such payment, and ~~((such manufacturer, wholesaler, or distributor))~~ the supplier shall be entitled to the possession of such ~~((merchandise))~~ equipment and repair parts.

All payments or allowances of credit due dealers under this section shall be paid or credited by the supplier within ninety days after the return of the repair parts or the transfer of equipment. After the ninety days, all sums of credits due include interest at the rate of eighteen percent per year. Title to equipment, attachments, and accessories is transferred to the supplier F.O.B. the dealer location.

The provisions of this section shall apply to any ~~((annual))~~ part return adjustment agreement made between a ~~((seller or retailer))~~ dealer and a ~~((manufacturer, wholesaler, or distributor))~~ supplier.

A supplier must repurchase specific data processing and computer communications hardware specifically required by the supplier to meet the supplier's minimum requirements and purchased by the dealer in the prior five years and held by the dealer on the date of termination. The supplier must also purchase software required by and sourced from the supplier, provided that the software is used exclusively to support the dealer's business with the supplier. The purchase price is the original net cost to the dealer, less twenty percent per year.

A supplier must repurchase, and the dealer must sell to the supplier, specialized repair tools. As applied in this section, specialized repair tools are defined as those tools required by the supplier and unique to the diagnosis or repair of the supplier's products. For specialized repair tools that are in new, unused condition and are applicable to the supplier's current products, the purchase price is one hundred percent of the original net cost to the dealer. For all other specialized repair tools, the purchase price is the original net cost to the dealer less twenty percent per year.

A supplier must repurchase, and the dealer must sell to the supplier, current signage. As used in this section, "current signage" means the principal outdoor signage required by the supplier that displays the supplier's current logo or similar exclusive identifier, and that identifies the dealer as representing either the supplier or the supplier's products, or both. The purchase price is the original net cost to the dealer less twenty percent per year, but may in no case be less than fifty percent of the original net cost to the dealer.

The provisions of this section shall be supplemental to any agreement between the ~~((retailer))~~ dealer and the ~~((manufacturer, wholesaler, or distributor))~~ supplier covering the return of ~~((farm implements, machinery, attachments, accessories,))~~ equipment and repair parts so that the ~~((retailer))~~ dealer can elect to pursue either his or her contract remedy or the remedy provided herein, and an election by the ~~((retailer))~~ dealer to pursue his or her contract remedy shall not bar his or her right to the remedy provided herein as to ~~((those farm implements, machinery, attachments, accessories,))~~ equipment and repair parts not affected by the contract remedy.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after January 1, 1976. Any contract in force and effect on January 1, 1976, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to this chapter: PROVIDED, That no contract covered by this chapter may be canceled by any party without good cause. For the purposes of this section, good cause shall include, but shall not be restricted to, the failure of any party to comply with the lawful provisions of the contract, the adjudication of any party to a contract as a bankrupt, wrongful refusal of ((manufacturer, wholesaler, or distributor)) the supplier to supply ((farm machinery, farm implements)) equipment and repair parts therefor.

**Sec. 3.** RCW 19.98.020 and 2000 c 171 s 66 are each amended to read as follows:

All repurchase payments to ~~((retailers and sellers))~~ dealers made pursuant to RCW 19.98.010 shall be less amounts owed on any lien or claim then outstanding upon such items covered by this section. Any ~~((wholesaler, manufacturer, or distributor))~~ supplier making repurchase payments covered by this chapter to any ~~((retailer or seller))~~ dealer shall satisfy such secured liens or claims pursuant to



Article ~~((62A.9))~~ 62A.9A RCW less any interest owed to the lienholder arising from the financing of such items which shall be paid to any such secured lienholder by the ~~((retailer or seller))~~ dealer. In no case shall the ~~((wholesaler, manufacturer, or distributor))~~ supplier, in making payments covered by RCW 19.98.010, pay in excess of those amounts prescribed therein.

**Sec. 4.** RCW 19.98.030 and 1975 1st ex.s. c 277 s 3 are each amended to read as follows:

The prices of ~~((farm implements, machinery))~~ equipment and repair parts therefor, required to be paid to any ~~((retail))~~ dealer as provided in RCW 19.98.010 shall be determined by taking one hundred percent of the net cost ~~((on farm implements, machinery, and attachments, and eighty-five))~~ of the invoiced price of equipment and ninety-five percent of the current net price of repair parts therefor as shown upon the ~~((manufacturer's, wholesaler's, or distributor's))~~ supplier's price lists ~~((or)), catalogues, or electronic catalogs~~ in effect at the time such contract is canceled or discontinued.

The supplier assumes transfer of ownership of equipment F.O.B. dealer location.

**Sec. 5.** RCW 19.98.040 and 1975 1st ex.s. c 277 s 4 are each amended to read as follows:

In the event that any ~~((manufacturer, wholesaler, or distributor of farm machinery, farm implements;))~~ supplier of equipment and repair parts ~~((therefor)),~~ upon cancellation or discontinuation of a contract by either a ~~((retailer))~~ dealer or ~~((a manufacturer, wholesaler, or distributor))~~ supplier, fails or refuses to make payment to such dealer as is required by RCW 19.98.010, ~~((such manufacturer, wholesaler, or distributor shall be))~~ the supplier is liable in a civil action to be brought by ~~((such retailer))~~ the dealer for such payments as are required by RCW 19.98.010.

**Sec. 6.** RCW 19.98.100 and 1990 c 124 s I are each amended to read as follows:

The legislature of this state finds that the retail distribution and sales of ~~((agricultural))~~ equipment, utilizing independent ~~((retail business))~~ dealers operating under agreements with ~~((the manufacturers and distributors))~~ suppliers, vitally affects the general economy of the state, public interests, and public welfare and that it is necessary to regulate the business relations between the ~~((independent))~~ dealers and the ~~((equipment manufacturers, wholesalers, and distributors))~~ suppliers.

**Sec. 7.** RCW 19.98.120 and 1990 c 124 s 3 are each amended to read as follows:

It shall be a violation of this chapter for a supplier to:

(1) Require or attempt to require any ~~((equipment))~~ dealer to order or accept delivery of any equipment or parts ~~((or any equipment with special features or accessories not included in the base list price of such equipment as publicly~~

~~advertised by the supplier which~~) that the ((equipment)) dealer has not voluntarily ordered;

(2) Require or attempt to require any ((equipment)) dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with the supplier, unless such supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the ((equipment)) dealer's order, to any ((equipment)) dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this chapter when deliveries are based on prior ordering histories, the priority given to the sequence in which the orders are received, or manufacturing schedules or if the failure is due to prudent and reasonable restriction on extension of credit by the supplier to the ((equipment)) dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control;

(4) Terminate, cancel, or fail to renew the dealer agreement of any ((equipment)) dealer or substantially change the ((equipment)) dealer's competitive circumstances, attempt to terminate or cancel, or threaten to not renew the dealer agreement or to substantially change the competitive circumstances without good cause;

(5) Condition the renewal, continuation, or extension of a dealer agreement on the ((equipment)) dealer's substantial renovation of the ((equipment)) dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the ((equipment)) dealer unless: The supplier has advised the ((equipment)) dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed date of renewal or extensions, but in no case less than one year; the supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's product and any economic conditions existing at the time in the dealer's trade area; and the ((equipment)) dealer does not make a good faith effort to complete the construction or renovation plans within one year;

(6) Discriminate in the prices charged for equipment of like grade ~~((and))~~, quality, and brand sold by the supplier to similarly situated dealers in this state. This subsection does not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered: PROVIDED, That nothing shall prevent a ((seller)) supplier from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) ~~((Unreasonably withhold consent for an equipment dealer to change the capital structure of the equipment dealership or the means by which it is financed: PROVIDED, That the equipment dealer meets the reasonable capital requirements of the manufacturer;~~

~~—(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest in the equipment dealership of any of them to any other person or persons or party or parties. However, no equipment dealer, officer, partner, member, or stockholder shall have the right to sell, transfer, or assign the equipment dealership or power of management or control thereunder without the written consent of the supplier. Such consent shall not be unreasonably withheld if the person or persons or party or parties meets the reasonable financial, business experience, and character standards of the supplier;~~

~~—(9)) Prevent, by contract or otherwise, any equipment dealer from changing the capital structure of the equipment dealership or the means by which the equipment dealership is financed, provided the equipment dealer at all times meets any reasonable capital standards imposed by the supplier or as otherwise agreed to between the equipment dealer and supplier, and provided this change by the equipment dealer does not result in a change of the controlling interest in the executive management or board of directors, or any guarantors of the equipment dealership;~~

~~(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest of any of them to any other party or parties. However, no equipment dealer, officer, partner, member, or stockholder has the right to sell, transfer, or assign the equipment dealership or power of management or control of the dealership without the written consent of the supplier. Should a supplier determine that the designated transferee is not acceptable, the supplier shall provide the equipment dealer with written notice of the supplier's objection and specific reasons for withholding its consent;~~

~~(9) Withhold consent to a transfer of interest in an equipment dealership unless, with due regard to regional market conditions and distribution economies, the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. In any dispute between a supplier and an equipment dealer, the supplier bears the burden of proving that the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. The proof offered must be in writing. The provisions of this subsection do not preclude any other basis for a supplier to withhold consent to a transfer of interest in an equipment dealer;~~

~~(10) Fail to compensate a dealer for preparation and delivery of equipment that the supplier sells or leases for use within this state and that the dealer prepares for delivery and delivers;~~

(11) Require ~~((an equipment))~~ a dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this chapter; or

~~((+10))~~ (12)(a) Unreasonably withhold consent, in the event of the death of the ~~((equipment))~~ dealer or the principal owner of the ~~((equipment))~~ dealership, to the transfer of the ~~((equipment))~~ dealer's interest in the ~~((equipment))~~ dealership ~~((to a member or members of the family of the equipment dealer, the principal owner of the equipment dealership, or))~~ to another qualified individual if the ~~((family member or other))~~ qualified individual meets the reasonable financial, business experience, and character standards required by the supplier. Should a supplier determine that the designated ~~((family member or other))~~ qualified individual does not meet those reasonable written standards, it shall provide the ~~((equipment))~~ dealership, heirs to the dealership, or the estate of the dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have sixty days to consider ~~((an equipment))~~ a dealer's request to make a transfer ~~((to a family member or other qualified individual))~~. If the ~~((family member or other))~~ qualified individual reasonably satisfies the supplier's objections within sixty days, the supplier shall approve the transfer. ~~((As used in this section, "family" includes a spouse, parents, siblings, children, stepchildren, sons-in-law, daughters-in-law, and lineal descendants, including those by adoption, of the equipment dealer or principal owner of the equipment dealership.))~~ Nothing in this section shall entitle a ~~((family member or other))~~ qualified individual ~~((of a deceased dealer or principal owner of the equipment dealership))~~ to continue to operate the dealership without the consent of the supplier.

(b) If a supplier and ~~((equipment))~~ dealer have duly executed an agreement concerning succession rights prior to the ~~((equipment))~~ dealer's death and the agreement has not been revoked, the agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

**Sec. 8.** RCW I9.98.130 and 1990 c 124 s 4 are each amended to read as follows:

(1) Except where a grounds for termination or nonrenewal of a dealer agreement or a substantial change in ~~((an equipment))~~ a dealer's competitive circumstances are contained in subsection (2)(a), (b), (c), (d), (e), or (f) of this section, a supplier shall give ~~((an equipment))~~ a dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or substantially change the ~~((equipment))~~ dealer's competitive circumstances. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide, except for termination pursuant to subsection (2)(a), (b), (c), (d), or (e) of this section, that the ~~((equipment))~~ dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The contractual terms of the dealer agreement shall not expire or the ~~((equipment))~~ dealer's competitive circumstances shall not

be substantially changed without the written consent of the ((equipment)) dealer prior to the expiration of at least ninety days following such notice.

(2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a termination by a supplier of a dealer agreement shall be with good cause when the ((equipment)) dealer:

(a) Has transferred a controlling ownership interest in the ((equipment)) dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the ((equipment)) dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the ((equipment)) dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated ((equipment)) dealerships in the state based on available record information;

(i) Has consistently failed to meet building and housekeeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf; or

(k) Has consistently failed to comply with the terms of the dealer agreement.

(3)(a) Notwithstanding the provisions of subsections (1) and (2) of this section, before the termination or nonrenewal of a dealer agreement based upon a supplier's claim that the dealer has failed to meet reasonable marketing criteria or market penetration, the supplier shall provide written notice of its intention at least one year in advance.

(b) Upon the end of the one-year period established in this subsection (3), the supplier may terminate or elect not to renew the dealer agreement only upon written notice specifying the reasons for determining that the dealer failed to meet reasonable marketing criteria or market penetration. The notice must specify that termination or nonrenewal is effective one hundred eighty days from the date of the notice.

**NEW SECTION. Sec. 9.** A new section is added to chapter 19.98 RCW to read as follows:

When a supplier enters into an agreement to establish a new dealer or dealership or to relocate a current dealer or dealership for a particular product line or make of equipment, the supplier must give written notice of such an agreement by certified mail to all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships within a seventy-five mile radius of the new dealer location. The supplier must provide in its written notice the following information about the proposed new or relocated dealer or dealership:

- (1) The proposed location;
  - (2) The proposed date for commencement of operation at the new location;
- and
- (3) The identities of all existing dealers or dealerships or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships located within a seventy-five mile radius of the new dealer location.

**NEW SECTION. Sec. 10.** A new section is added to chapter 19.98 RCW to read as follows:

(1) In the event a warranty claim is submitted by a dealer to a supplier while a dealer agreement is in effect, or after the termination of a dealer agreement, if the claim is for work performed before the effective date of the dealer agreement termination:

(a) A supplier shall fulfill any warranty agreement with each of its dealers for labor and parts relative to repairs of equipment covered by the terms of such an agreement.

(b) The supplier must approve or disapprove, in writing, any claim submitted by a dealer for warranty compensation for labor or parts within thirty days of receipt of such a claim by the supplier.

(c) The supplier must pay to the submitting dealer any approved dealer claim within thirty days following approval of such a claim.

(d) If a supplier disapproves a dealer warranty claim, the supplier must state the specific reasons for rejecting the claim in its written notification required by (b) of this subsection.

(e) A claim that is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty days of receipt by the dealer of the supplier's notification of such a disapproval.

(f) A claim that is not specifically disapproved, in writing, by the supplier within thirty days following the supplier's receipt of such a claim is conclusively

deemed to be approved and must be paid to the submitting dealer within thirty days following expiration of the notification period established in (b) of this subsection.

(g) A supplier may audit warranty claims submitted by its dealers for a period of up to one year following payment of the claims, and may charge back to its dealers any amounts paid based upon claims shown by audit to be false. The supplier has the right to adjust claims for errors discovered during the audit, and if necessary, to adjust claims paid in error.

(2) A supplier must compensate its dealers for warranty claims pursuant to the following schedule:

(a) Reasonable compensation must be made by the supplier for costs associated with diagnostic work, repair service, parts, and labor that are related to warranted repairs;

(b) Time allowances for diagnosis and performance of warranty work and service must be adequate for the work being performed;

(c) The hourly labor rate for which the dealer is compensated may not be less than the rate charged by the dealer for like services provided to nonwarranty customers for nonwarranted service; and

(d) Compensation for parts used in the performance of a warranted repair may not be less than the amount paid by the dealer to obtain the parts, plus a reasonable allowance for shipping and handling.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a supplier may withhold payment of a warranty claim as setoff against reasonable obligations otherwise owed by the dealer to the supplier.

(4) Notwithstanding the provisions of subsection (2) of this section, a dealer may accept the supplier's reimbursement terms and conditions in lieu of the terms and conditions set forth in subsection (2) of this section.

**NEW SECTION. Sec. 11.** A new section is added to chapter 19.98 RCW to read as follows:

A supplier may not audit a dealer's records with respect to any warranty claim submitted more than one year before the audit, unless a false claim is disclosed. However, the supplier has the right to audit warranty claims submitted more than one year before the audit when the audit discloses a false claim.

**NEW SECTION. Sec. 12.** A new section is added to chapter 19.98 RCW to read as follows:

(1) In the event that the supplier fails to make payment in accordance with the terms of section 10 of this act or violates any other provisions of section 10 or 11 of this act, a dealer may bring an action in a court of competent jurisdiction to obtain payment of a warranty claim submitted to a supplier.

(2) In the event that the court finds that the supplier has failed to make payment in accordance with the terms of section 10 of this act or has violated any other provisions of section 10 or 11 of this act, the court shall award the dealer costs and reasonable attorneys' fees.

**NEW SECTION. Sec. 13.** A new section is added to chapter 19.98 RCW to read as follows:

(1) In the event a supplier requires the dealer to work on equipment to enhance the safe operation of the equipment, the supplier must reimburse the dealer for parts, labor, and transportation of equipment or personnel to perform the work on equipment covered by the requirements of the supplier.

(2) In the event a supplier requires the dealer to perform product improvement work on equipment, the supplier must reimburse the dealer for parts and labor.

(3) For purposes of this section, a supplier must compensate its dealers pursuant to the following schedule:

(a) The hourly labor rate for which the dealer is compensated may not be less than the rate charged by the dealer for like services provided; and

(b) Compensation for parts used in the performance of safety enhancements or product improvements as requested by the supplier may not be less than the amount paid by the dealer to obtain the parts, plus a reasonable allowance for shipping and handling.

(4) Notwithstanding the provisions of subsection (3) of this section, a dealer may accept the supplier's reimbursement terms and conditions in lieu of the terms and conditions set forth in subsection (3) of this section.

**NEW SECTION. Sec. 14.** A new section is added to chapter 19.98 RCW to read as follows:

(1) Any party to a dealer agreement aggrieved by the conduct of the other party to the agreement with respect to the provisions of this chapter may seek arbitration of the issues involved in the decision of the other party under the provisions of RCW 7.04.010 through 7.04.210. The arbitration is pursuant to the commercial arbitration rules of the American arbitration association. The findings and conclusions of the arbitrator or panel of arbitrators is binding upon both parties. Upon demand for arbitration by one party, it is presumed for purposes of the provisions of RCW 7.04.010 through 7.04.210 that the parties have consented to arbitration, and that the costs of witness fees and other fees in the case, together with reasonable attorneys' fees, must be paid by the losing party.

(2) Notwithstanding subsection (1) of this section, any dealer has a cause of action against a supplier for damages sustained by the dealer as a consequence of the supplier's violation of any provisions of RCW 19.98.120 or 19.98.130, together with the actual costs of such action, including reasonable attorneys' fees.

(3) The dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or change in competitive circumstances as determined under subsection (1) of this section or by a court.

(4) The remedies set forth in this section may not be considered exclusive and are in addition to any other remedies permitted by law, unless the parties have chosen binding arbitration under subsection (1) of this section.

**NEW SECTION. Sec. 15.** RCW 19.98.110 (Definitions) and 2000 c 171 s 67 & 1990 c 124 s 2 are each repealed.



Passed the House March 9, 2002.

Passed the Senate March 5, 2002.

Approved by the Governor March 28, 2002.

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## CHAPTER 237

[Engrossed Senate Bill 5692]

### YOUTH COURTS

AN ACT Relating to authorizing the participation of youth as decision makers in dispositions of minor offenses and rules violations; amending RCW 13.40.020, 13.40.080, 9.94A.850, 13.40.250, and 46.63.040; adding new sections to chapter 13.40 RCW; adding a new section to chapter 28A.300 RCW; adding a new section to chapter 28A.320 RCW; and adding a new chapter to Title 3 RCW.

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

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

(1) "Court" when used without further qualification means the district court under chapter 3.30 RCW, the municipal department under chapter 3.46 RCW, or the municipal court under chapter 3.50 or 35.20 RCW.

(2) "Traffic infraction" means those acts defined as traffic infractions by RCW 46.63.020.

(3) "Youth court" means an alternative method of hearing and disposing of traffic infractions for juveniles age sixteen or seventeen.

**NEW SECTION.** **Sec. 2.** (1) A court created under chapter 3.30, 3.46, 3.50, or 35.20 RCW may create a youth court. The youth court shall have jurisdiction over traffic infractions alleged to have been committed by juveniles age sixteen or seventeen. The court may refer a juvenile to the youth court upon request of any party or upon its own motion. However, a juvenile shall not be required under this section to have his or her traffic infraction referred to or disposed of by a youth court.

(2) To be referred to a youth court, a juvenile:

(a) May not have had a prior traffic infraction referred to a youth court;

(b) May not be under the jurisdiction of any court for a violation of any provision of Title 46 RCW;

(c) May not have any convictions for a violation of any provision of Title 46 RCW; and

(d) Must acknowledge that there is a high likelihood that he or she would be found to have committed the traffic infraction.

**NEW SECTION.** **Sec. 3.** (1) A youth court agreement shall be a contract between a juvenile accused of a traffic infraction and a court whereby the juvenile agrees to fulfill certain conditions imposed by a youth court in lieu of a determination that a traffic infraction occurred. Such agreements may be entered into only after the law enforcement authority has determined that probable cause

exists to believe that a traffic infraction has been committed and that the juvenile committed it. A youth court agreement shall be reduced to writing and signed by the court and the youth accepting the terms of the agreement. Such agreements shall be entered into as expeditiously as possible.

(2) Conditions imposed on a juvenile by a youth court shall be limited to one or more of the following:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Attendance at defensive driving school or driver improvement education classes or, in the discretion of the court, a like means of fulfilling this condition. The state shall not be liable for costs resulting from the youth court or the conditions imposed upon the juvenile by the youth court;

(c) A monetary penalty, not to exceed one hundred dollars. All monetary penalties assessed and collected under this section shall be deposited and distributed in the same manner as costs, fines, forfeitures, and penalties are assessed and collected under RCW 2.68.040, 3.46.120, 3.50.100, 3.62.020, 3.62.040, 35.20.220, and 46.63.110(6), regardless of the juvenile's successful or unsuccessful completion of the youth court agreement;

(d) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas;

(e) Participating in law-related education classes;

(f) Providing periodic reports to the youth court or the court;

(g) Participating in mentoring programs;

(h) Serving as a participant in future youth court proceedings;

(i) Writing apology letters; or

(j) Writing essays.

(3) Youth courts may require that the youth pay any costs associated with conditions imposed upon the youth by the youth court.

(a) A youth court disposition shall be completed within one hundred eighty days from the date of referral.

(b) The court, as specified in section 2 of this act, shall monitor the successful or unsuccessful completion of the disposition.

(4) A youth court agreement may extend beyond the eighteenth birthday of the youth.

(5) Any juvenile who is, or may be, referred to a youth court shall be afforded due process in all contacts with the youth court regardless of whether the juvenile is accepted by the youth court or whether the youth court program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written agreement shall be executed stating all conditions in clearly understandable language and the action that will be taken by the court upon successful or unsuccessful completion of the agreement;

(b) Violation of the terms of the agreement shall be the only grounds for termination.

(6) The youth court shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during youth court hearings or negotiations.

(7) The court shall be responsible for advising a juvenile of his or her rights as provided in this chapter.

(8) When a juvenile enters into a youth court agreement, the court may receive only the following information for dispositional purposes:

- (a) The fact that a traffic infraction was alleged to have been committed;
- (b) The fact that a youth court agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the juvenile performed his or her obligations under such agreement; and
- (e) The facts of the alleged traffic infraction.

(9) A court may refuse to enter into a youth court agreement with a juvenile. When a court refuses to enter a youth court agreement with a juvenile, it shall set the matter for hearing in accordance with all applicable court rules and statutory provisions governing the hearing and disposition of traffic infractions.

(10) If a monetary penalty required by a youth court agreement cannot reasonably be paid due to a lack of financial resources of the youth, the court may convert any or all of the monetary penalty into community service. The modification of the youth court agreement shall be in writing and signed by the juvenile and the court. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

**NEW SECTION. Sec. 4.** Youth courts provide a disposition method for cases involving juveniles alleged to have committed traffic infractions, in which participants, under the supervision of the court, may serve in various capacities within the youth court, acting in the role of jurors, lawyers, bailiffs, clerks, and judges. Youth courts have no jurisdiction except as provided for in this chapter. Youth courts are not courts established under Article IV of the state Constitution.

**NEW SECTION. Sec. 5.** The administrative office of the courts shall encourage the courts to work with cities, counties, and schools to implement, expand, or use youth court programs for juveniles who commit traffic infractions. Program operations of youth court programs may be funded by government and private grants. Youth court programs are limited to those that:

- (1) Are developed using the guidelines for creating and operating youth court programs developed by nationally recognized experts in youth court projects;
- (2) Target youth ages sixteen and seventeen who are alleged to have committed a traffic infraction; and
- (3) Emphasize the following principles:
  - (a) Youth must be held accountable for their problem behavior;
  - (b) Youth must be educated about the impact their actions have on themselves and others including their victims, their families, and their community;

(c) Youth must develop skills to resolve problems with their peers more effectively; and

(d) Youth should be provided a meaningful forum to practice and enhance newly developed skills.

**NEW SECTION. Sec. 6.** A court may require that a youth pay a nonrefundable fee, not exceeding thirty dollars, to cover the costs of administering the program. The fee may be reduced or waived for a participant. Fees shall be paid to and accounted for by the court. The fees collected under this section shall not constitute "certain costs" as defined in RCW 3.46.120(2), 3.50.100(2), 3.62.020(2), 3.62.040(2), and 35.20.220(2).

**Sec. 7.** RCW 13.40.020 and 1997 c 338 s 10 are each amended to read as follows:

For the purposes of this chapter:

(1) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;

(2) Community-based sanctions may include one or more of the following:

(a) A fine, not to exceed five hundred dollars;

(b) Community service not to exceed one hundred fifty hours of service;

(3) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community service may be performed through public or private organizations or through work crews;

(4) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(d) Posting of a probation bond;

(5) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(6) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(7) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;

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

(9) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(10) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, youth court under the supervision of the juvenile court, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent,

and business owner, and should represent the cultural diversity of the local community;

(11) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(12) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(13) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110 or who is otherwise under adult court jurisdiction;

(15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(16) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community service; or (d) \$0-\$500 fine;

(17) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(18) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(19) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(20) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(21) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(22) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense if the offense is a sex offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(23) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(24) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(25) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(26) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(27) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(28) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(29) "Violent offense" means a violent offense as defined in RCW 9.94A.030.

(30) "Youth court" means a diversion unit under the supervision of the juvenile court.

**Sec. 8.** RCW 13.40.080 and 1999 c 91 s 1 are each amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a ~~((diversionary))~~ diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by ~~((the))~~ any victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the ~~((diversionary))~~ diversion unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars~~((--In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed))~~);

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of ~~((the))~~ any victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) Notwithstanding the provisions of subsection (2) of this section, youth courts are not limited to the conditions imposed by subsection (2) of this section in imposing sanctions on juveniles pursuant to section 14 of this act.

(4) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian and victims who have contacted the ~~((diversionary))~~ diversion unit and, to the extent possible, involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

~~((4))~~ (5)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.

(b) If additional time is necessary for the juvenile to complete restitution to ~~((the))~~ a victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection ~~((4))~~ (5)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of ten years after



the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may not require the juvenile to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

~~((5))~~ (6) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

~~((6))~~ (7) Divertees and potential divertees shall be afforded due process in all contacts with a ~~((diversionary))~~ diversion unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

~~((7))~~ (8) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

~~((8))~~ (9) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

~~((9))~~ (10) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

~~((10))~~ (11) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the ~~((diversionary))~~ diversion unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

~~((11))~~ (12) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

- (a) The fact that a charge or charges were made;
- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

~~((12))~~ (13) A ~~((diversionary))~~ diversion unit may refuse to enter into a diversion agreement with a juvenile. When a ~~((diversionary))~~ diversion unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The ~~((diversionary))~~ diversion unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

~~((13))~~ (14) A ~~((diversionary))~~ diversion unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection ~~((shall))~~ includes the authority to refer the juvenile to community-based counseling or treatment

programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a ~~((diversionary))~~ diversion unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

~~((14))~~ (15) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

~~((15))~~ (16) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

~~((16))~~ (17) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section.

**NEW SECTION.** Sec. 9. A new section is added to chapter 13.40 RCW to read as follows:

Youth courts provide a diversion for cases involving juvenile offenders, in which participants, under the supervision of an adult coordinator, may serve in various capacities within the program, acting in the role of jurors, lawyers, bailiffs, clerks, and judges. Youths who appear before youth courts are youths eligible for diversion pursuant to RCW 13.40.070 (6) and (7). Youth courts have no jurisdiction except as provided for in this act. Youth courts are diversion units and not courts established under Article IV of the state Constitution.

**NEW SECTION.** Sec. 10. A new section is added to chapter 13.40 RCW to read as follows:

(1) The administrative office of the courts shall encourage the juvenile courts to work with cities and counties to implement, expand, or use youth court programs for juveniles who commit diversion-eligible offenses, civil, or traffic infractions. Program operations of youth court programs may be funded by government and private grants. Youth court programs are limited to those that:

- (a) Are developed using the guidelines for creating and operating youth court programs developed by nationally recognized experts in youth court projects;
- (b) Target offenders age eight through seventeen; and
- (c) Emphasize the following principles:
  - (i) Youth must be held accountable for their problem behavior;
  - (ii) Youth must be educated about the impact their actions have on themselves and others including their victims, their families, and their community;
  - (iii) Youth must develop skills to resolve problems with their peers more effectively; and
  - (iv) Youth should be provided a meaningful forum to practice and enhance newly developed skills.

(2) Youth court programs under this section may be established by private nonprofit organizations and schools, upon prior approval and under the supervision of juvenile court.

**NEW SECTION. Sec. 11.** A new section is added to chapter 13.40 RCW to read as follows:

(1) Youth courts have authority over juveniles ages eight through seventeen who:

- (a) Along with their parent, guardian, or legal custodian, voluntarily and in writing request youth court involvement;
- (b) Admit they have committed the offense they are referred for;
- (c) Along with their parent, guardian, or legal custodian, waive any privilege against self-incrimination concerning the offense; and
- (d) Along with their parent, guardian, or legal custodian, agree to comply with the youth court disposition of the case.

(2) Youth courts shall not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including a youth with a matter pending before the juvenile court but which has not yet been adjudicated.

(3) Youth courts may decline to accept a youth for youth court disposition for any reason and may terminate a youth from youth court participation at any time.

(4) A youth or his or her parent, guardian, or legal custodian may withdraw from the youth court process at any time.

(5) Youth courts shall give any victims of a juvenile the opportunity to be notified, present, and heard in any youth court proceeding.

**NEW SECTION. Sec. 12.** A new section is added to chapter 13.40 RCW to read as follows:

Youth court may not notify the juvenile court of satisfaction of conditions until all ordered restitution has been paid.

**NEW SECTION. Sec. 13.** A new section is added to chapter 13.40 RCW to read as follows:

Every youth appearing before a youth court shall be accompanied by his or her parent, guardian, or legal custodian.

**NEW SECTION.** **Sec. 14.** A new section is added to chapter 13.40 RCW to read as follows:

(1) Youth court dispositional options include those delineated in RCW 13.40.080, and may also include:

(a) Participating in law-related education classes, appropriate counseling, treatment, or other education programs;

(b) Providing periodic reports to the youth court;

(c) Participating in mentoring programs;

(d) Serving as a participant in future youth court proceedings;

(e) Writing apology letters; or

(f) Writing essays.

(2) Youth courts shall not impose a term of confinement or detention. Youth courts may require that the youth pay reasonable fees to participate in youth court and in classes, counseling, treatment, or other educational programs that are the disposition of the youth court.

(3) A youth court disposition shall be completed within one hundred eighty days from the date of referral.

(4) Pursuant to RCW 13.40.080(1), a youth court disposition shall be reduced to writing and signed by the youth and his or her parent, guardian, or legal custodian accepting the disposition terms.

(5) Youth court shall notify the juvenile court upon successful or unsuccessful completion of the disposition.

(6) Youth court shall notify the prosecutor or probation counselor of a failure to successfully complete the youth court disposition.

**NEW SECTION.** **Sec. 15.** A new section is added to chapter 13.40 RCW to read as follows:

A youth court may require that a youth pay a nonrefundable fee, not exceeding thirty dollars, to cover the costs of administering the program. The fee may be reduced or waived for a participant. Fees shall be paid to and accounted for by the youth court.

**Sec. 16.** RCW 9.94A.850 and 2000 c 28 s 41 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The office of the administrator for the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

**NEW SECTION. Sec. 17.** A new section is added to chapter 28A.300 RCW to read as follows:

The office of the superintendent of public instruction shall encourage school districts to implement, expand, or use student court programs for students who commit violations of school rules and policies. Program operations of student courts may be funded by government and private grants. Student court programs are limited to those that:

(1) Are developed using the guidelines for creating and operating student court programs developed by nationally recognized student court projects;

(2) Target violations of school rules by students enrolled in public or private school; and

(3) Emphasize the following principles:

(a) Youth must be held accountable for their problem behavior;

(b) Youth must be educated about the impact their actions have on themselves and others including the school, school personnel, their classmates, their families, and their community;

(c) Youth must develop skills to resolve problems with their peers more effectively; and

(d) Youth should be provided a meaningful forum to practice and enhance newly developed skills.

**NEW SECTION. Sec. 18.** A new section is added to chapter 28A.320 RCW to read as follows:

Local school boards may provide for school credit for participation as a member of a youth court as defined in section 1 of this act or RCW 13.40.020 or a student court pursuant to section 17 of this act.

**Sec. 19.** RCW 13.40.250 and 1997 c 338 s 36 are each amended to read as follows:

A traffic or civil infraction case involving a juvenile under the age of sixteen may be diverted in accordance with the provisions of this chapter or filed in juvenile court.

(1) If a notice of a traffic or civil infraction is filed in juvenile court, the juvenile named in the notice shall be afforded the same due process afforded to adult defendants in traffic infraction cases.

(2) A monetary penalty imposed upon a juvenile under the age of sixteen who is found to have committed a traffic or civil infraction may not exceed one hundred dollars. At the juvenile's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the prevailing state minimum wage per hour.



(3) A diversion agreement entered into by a juvenile referred pursuant to this section shall be limited to thirty hours of community service, or educational or informational sessions.

(4) Traffic or civil infractions referred to a youth court pursuant to this section are subject to the conditions imposed by section 14 of this act.

(5) If a case involving the commission of a traffic or civil infraction or offense by a juvenile under the age of sixteen has been referred to a diversion unit, an abstract of the action taken by the diversion unit may be forwarded to the department of licensing in the manner provided for in RCW 46.20.270(2).

**Sec. 20.** RCW 46.63.040 and 1984 c 258 s 137 are each amended to read as follows:

(1) All violations of state law, local law, ordinance, regulation, or resolution designated as traffic infractions in RCW 46.63.020 may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine traffic infractions pursuant to this chapter.

(3) Any city or town with a municipal court may contract with the county to have traffic infractions committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine traffic infractions pursuant to this chapter.

(5) Any district or municipal court may refer juveniles age sixteen or seventeen who are enrolled in school to a youth court, as defined in section 1 of this act or RCW 13.40.020, for traffic infractions.

(6) The boards of regents of the state universities, and the boards of trustees of the regional universities and of The Evergreen State College have the authority to hear and determine traffic infractions under RCW 28B.10.560.

**NEW SECTION. Sec. 21.** Sections 1 through 6 of this act constitute a new chapter in Title 3 RCW.

Passed the Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

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## CHAPTER 238

[Engrossed Senate Bill 6396]

### CAPITAL BUDGET

AN ACT Relating to the capital budget; amending RCW 28B.30.730 and 28B.50.360; amending 2001 2nd sp.s. c 8 ss 111, 117, 118, 173, 157, 183, 257, 270, 278, 303, 311, 313, 344, 346, 348, 350, 354, 387, 388, 390, 392, 416, 427, 505, 506, 602, 624, 638, 661, 701, 755, 784, 824, 828, 829, 799, 803, 804, 813, 907, and 265 (uncodified); adding new sections to 2001 2nd sp.s. c 8 (uncodified); creating new sections; repealing 2001 2nd sp.s. c 8 ss 182, 184, 186, 187, and 421 (uncodified); making appropriations; authorizing expenditures for capital improvements; and declaring an emergency.

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

**PART I**  
**SUPPLEMENTAL CAPITAL BUDGET**

NEW SECTION. **Sec. 101.** A supplemental capital budget is hereby adopted and, subject to the provisions set forth in this act, the several dollar amounts herein specified, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be incurred for capital projects during the period ending June 30, 2003, out of the several funds specified in this act.

**Sec. 102.** 2001 2nd sp.s. c 8 s 111 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

Community Services Facilities Program (02-4-007)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the provisions of RCW 43.63A.125. The following projects are eligible for funding:

Projects	Recommendation
YMCA of Grays Harbor, Aberdeen	\$300,000
Community Youth Services, Olympia	\$300,000
Skagit County Community Action, Concrete	\$300,000
Kindering Center, Bellevue	\$300,000
Bellevue Family YMCA, Bellevue	\$300,000
Refugee Women's Alliance, Seattle	\$300,000
YWCA of Walla Walla, Walla Walla	\$300,000
Pierce County Alliance (facility), Tacoma	\$61,000
Compass Health, Everett	\$300,000
Mid-City Concerns, Spokane	\$28,000
Children's Home Society, Vaughn	\$70,000
Children's Home society, Spokane	\$238,000
Catholic Family/Child Services, Yakima	\$152,000
Korean Women's Association, Tacoma	\$218,000
Factory Small Biz Incubator, Tacoma	\$300,000
Lao Highland Association of King County, Seattle	\$119,000
First Place, Seattle	\$300,000
NE Washington Rural Resources, Colville	\$300,000
Filipino Community Center, Seattle	\$200,000
Filipino Community Center, Wapato	\$25,000
<del>((Subtotal</del>	<del>\$4,411,000</del>

~~Alternate Projects))~~

Nooksack Community Aid Society, Deming	\$165,000
Childhaven, Seattle	\$149,000
((Subtotal	<del>————— \$314,000))</del>
Total	\$4,725,000

(2) \$200,000 of the appropriation in this section for the Filipino Community Center in Seattle shall be matched by \$200,000 in additional contributions toward the project from local government.

Appropriation:

State Building Construction Account—State ..	\$	(( <del>4,411,000</del> ))
		<u>4,725,000</u>
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	16,000,000
TOTAL .....	\$	(( <del>20,411,000</del> ))
		<u>20,725,000</u>

**Sec. 103.** 2001 2nd sp.s. c 8 s 117 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

Housing Assistance, Weatherization, and Affordable Housing (02-4-010)

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

(1) At least \$9,000,000 of the new appropriation from the state taxable building construction account is provided solely for weatherization administered through the energy matchmakers program.

(2) \$5,000,000 of the new appropriation from the state taxable building construction account is provided solely to promote development of safe and affordable housing units for persons eligible for services from the division of developmental disabilities within the department of social and health services.

(3) \$2,000,000 of the appropriation from the state taxable building construction account is provided solely for grants to nonprofit organizations and public housing authorities for revolving loan, self-help housing programs for low and moderate income families.

(4) \$1,000,000 of the new appropriation from the state taxable building construction account is provided solely for shelters, transitional housing, or other housing facilities for victims of domestic violence.

(5) Reappropriations in this section shall not be included in the annual funds available for determining the administrative costs authorized under RCW 43.185.050.

Appropriation:

State <u>Taxable</u> Building Construction Account—		
State .....	\$	60,000,000
Washington Housing Trust Account .....	\$	5,000,000

Subtotal Appropriation .....	\$	65,000,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	200,000,000
TOTAL .....	\$	265,000,000

\*Sec. 104. 2001 2nd sp.s. c 8 s 118 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

*Burke Museum ((Governance and Siting)) Expansion Study (00-2-012)*

*The reappropriation in this section is subject to the following conditions and limitations:*

*(1) Funds are provided for a study of the ((governance of the Burke museum and for an examination of the)) potential expansion of the museum facility including siting issues. The study shall be facilitated by the department in consultation with the University of Washington((, the department of community, trade, and economic development's tourism and economic development units, the executive director of the Washington state historical society, the city of Seattle, King county, and members of the community and businesses from various geographic regions of the state)) and other interested public agencies and community groups. The department shall provide a report to the legislature by June 30, ((2002)) 2003, outlining ((funding)) strategies for an expanded state natural history museum that recognizes ((the)) limited state resources ((for capital facilities programmatic enhancements, and outlines)) and alternative funding resources and partners.*

*(2) A maximum of \$150,000 from the appropriation in this section may be used for the preservation, storage, and presentation of museum collections or for matching other funding sources for the preservation, storage, and presentation of museum collections.*

*(3) The reappropriation in this section is subject to the conditions and limitations of section 906(2)(b) of this act.*

**Reappropriation:**

*University of Washington Building*

Account—State .....	\$	350,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	350,000

\*Sec. 104 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 105.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF COMMUNITY, TRADE, & ECONOMIC DEVELOPMENT**

*Community Economic Revitalization (CERB)(03-4-001)*

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation from the public facility construction loan revolving account shall be used solely to provide loans to eligible local governments. The department shall ensure that all principal and interest payments from loans made on moneys from this account are paid into this account.

(2) If chapter . . . (House Bill No. 2425), Laws of 2002 is not enacted by June 30, 2002, the appropriation in this section shall lapse.

Appropriation:

Public Facility Construction Loan Revolving		
Account—State . . . . .	\$	3,656,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	3,656,000

**Sec. 106.** 2001 2nd sp.s. c 8 s 173 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

Office Building Two Rehabilitation (98-1-007)

Reappropriation:

Thurston County Capital Facilities Account—		
State . . . . .	\$	2,000,000

Appropriation:

Thurston County Capital Facilities Account—		
State . . . . .	\$	<del>((5,850,000))</del>
		<u>4,750,000</u>
Prior Biennia (Expenditures) . . . . .	\$	9,250,000
Future Biennia (Projected Costs) . . . . .	\$	<del>((5,310,000))</del>
		<u>6,410,000</u>
TOTAL . . . . .	\$	22,410,000

**NEW SECTION. Sec. 107.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

Deschutes Parkway Repair (2002-S-009)

Appropriation:

State Building Construction Account—State . . . . .	\$	850,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	850,000

**NEW SECTION. Sec. 108.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

Capitol Campus Parking (03-2-001)

The appropriation in this section is subject to the following condition and limitation: The department shall designate parking spaces on the west capitol campus, except for public parking, as leased parking per WAC 236-12-290(1)(b)(ii).

Appropriation:

State Vehicle Parking Account—State . . . . .	\$	531,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	531,000

**Sec. 109.** 2001 2nd sp.s. c 8 s 157 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

Legislative Building: Rehabilitation (01-1-008)

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

(1) The appropriations in this section are subject to the conditions and limitations of sections 902 and 903 of this act.

(2) The department of general administration, 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 2005 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, and may use modular space. Decisions on the use of space for the Pritchard building will be made by legislative leadership by July 1, 2001, to make it available for use by the legislature by April 1, 2002;

(d) The department shall temporarily move the state library from the Pritchard building by October 1, 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 primary 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 the office of the governor, the office of the secretary of state, the office of treasurer, and the office of the state auditor by November 1, 2001, and by the legislature fourteen days after the end of the 2002 legislative session 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.

(3) 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 periodically advise the department regarding the rehabilitation, the receipt and use of private funds, and other issues that may arise.

(4) 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 November 15, 2001, and shall consult with the legislature and governor on major decisions including placement of the cafeteria and exiting stairs in the legislative building by August 31, 2001.

(5) In the event of any conflicts between the conditions and limitations in this section and section 3, chapter 123, Laws of 2001, the conditions and limitations of this section shall apply.

(6) \$154,000 of the capitol historic district construction account appropriation is provided solely for the department of general administration to contract for fund-raising services for the solicitation of charitable gifts, grants, or donations specifically for the purpose of preservation and restoration of the state legislative building and related educational exhibits and programs. By June 30, 2004, the amount provided by this subsection shall be reinvested to the capitol historic district construction account from the proceeds of the gifts, grants, and donations.

Reappropriation:

Capitol Building Construction Account—State . . . . .	\$	2,000,000
Thurston County Capital Facilities		
Account—State . . . . .	\$	2,500,000
Subtotal Reappropriation . . . . .	\$	4,500,000

Appropriation:

Capitol Historic District Construction		
Account—State . . . . .	\$	81,681,000
Thurston County Capital Facilities		
Account—State . . . . .	\$	1,300,000
Subtotal Appropriation . . . . .	\$	82,981,000

Prior Biennia (Expenditures) . . . . .	\$	1,000,000
Future Biennia (Projected Costs) . . . . .	\$	2,300,000
TOTAL . . . . .	\$	90,781,000

Sec. 110. 2001 2nd sp.s. c 8 s 183 (uncodified) is amended to read as follows:

**FOR THE MILITARY DEPARTMENT**

Bremerton Readiness Center (02-2-004)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the conditions and limitations of sections 902 and 903 of this act.

(2) No money shall be committed or expended from the state building construction account until the general fund—federal construction funds are received and allotted in accordance with section 903 of this act.

(3) In addition to the annual project progress reporting requirement of RCW 43.88.160(3), the department will file quarterly project progress reports with the office of financial management. These reports will contain local, state, and federal funding reconciliations and balance sheets for this project and will detail any federal intentions on future readiness center projects.

(4) Savings realized on the Yakima readiness center project (98-2-001) may be transferred to the Bremerton readiness center project.

Appropriation:

General Fund—Federal . . . . .	\$	5,446,000
State Building Construction Account—State . . . . .	\$	<del>((4,728,000))</del> <u>6,377,000</u>
Subtotal Appropriation . . . . .	\$	<del>((10,174,000))</del> <u>11,823,000</u>
Prior Biennia (Expenditures) . . . . .	\$	1,000,000
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	<del>((11,174,000))</del> <u>12,823,000</u>

NEW SECTION. Sec. 111. A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

Western State Hospital - Power Plant Revisions and Smokestack Removal (03-1-012)

Appropriation:

State Building Construction Account—State . . . . .	\$	1,080,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,080,000



**NEW SECTION. Sec. 112. FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

Regional Secure Community Transition Facilities - Preconstruction Activities (03-H-002)

The appropriation in this section is subject to the following conditions and limitations: If chapter . . . (Engrossed Substitute Senate Bill No. 6594), Laws of 2002 is not enacted by June 30, 2002, the appropriation in this section shall lapse.

Appropriation:

State Building Construction Account—State . . . . .	\$	200,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	200,000

**Sec. 113. 2001 2nd sp.s. c 8 s 257 (uncodified) is amended to read as follows: FOR THE DEPARTMENT OF CORRECTIONS**

Expand Coyote Ridge Corrections Center (98-2-011)

The appropriation in this section is subject to the following conditions and limitations: To the extent that funding for the design of the expansion at Coyote Ridge corrections center is not necessary as a result of sentencing legislation passed during the 2002 legislative session, the department may expend up to \$264,000 on the predesign for the potential renovation or expansion of existing facilities to accommodate inmate population growth in higher custody levels.

Reappropriation:

State Building Construction Account—State . . . . .	\$	447,348
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Appropriation:

State Building Construction Account—		
State . . . . .	\$	((1,150,000))
		<u>1,414,000</u>
Prior Biennia (Expenditures) . . . . .	\$	802,069
Future Biennia (Projected Costs) . . . . .	\$	((227,763,000))
		<u>227,499,000</u>
TOTAL . . . . .	\$	230,162,417

**Sec. 114. 2001 2nd sp.s. c 8 s 270 (uncodified) is amended to read as follows: FOR THE DEPARTMENT OF CORRECTIONS**

Monroe Corrections Center - 100 Bed Intensive Management and Segregation Units (00-2-008)

The appropriations in this section are subject to the conditions and limitations of sections 902 and 903 of this act.

Reappropriation:

State Building Construction Account—		
State . . . . .	\$	40,665

Appropriation:

General Fund—Federal .....	\$	((18,162,205))
		<u>11,933,692</u>
State Building Construction Account—		
State .....	\$	((2,521,795))
		<u>8,750,308</u>
Subtotal Appropriation .....	\$	20,684,000
Prior Biennia (Expenditures) .....	\$	149,335
Future Biennia (Projected Costs) .....	\$	17,727,000
TOTAL .....	\$	38,601,000

**Sec. 115.** 2001 2nd sp.s. c 8 s 278 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF CORRECTIONS**

Statewide: Department of Corrections Emergency Funds (02-1-028)

Appropriation:

Charitable, Educational, Penal, and Reformatory		
Institutions Account—State .....	\$	1,700,000
<u>State Building Construction Account—</u>		
<u>State</u> .....	\$	<u>850,000</u>
<u>Subtotal Appropriation</u> .....	\$	<u>2,550,000</u>
Prior Biennia (Expenditures) .....	\$	901,000
Future Biennia (Projected Costs) .....	\$	7,800,000
TOTAL .....	\$	((10,401,000))
		<u>11,251,000</u>

**NEW SECTION. Sec. 116.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF CORRECTIONS**

Coyote Ridge Corrections Center - 210 Emergency Beds (03-2-002)

The appropriation in this section is subject to the conditions and limitations of sections 902 and 903 of this act.

Appropriation:

State Building Construction Account—State .....	\$	3,394,000
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	3,394,000

**NEW SECTION. Sec. 117.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF CORRECTIONS**

McNeil Island Corrections Center (MICC): Water Tank Replacement (03-1-022)

Appropriation:

State Building Construction Account—State . . . . .	\$	1,394,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,394,000

**NEW SECTION. Sec. 118.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF CORRECTIONS**

McNeil Island Corrections Center (MICC): Fire Audit Requirements (03-2-001)

Appropriation:

State Building Construction Account—State . . . . .	\$	140,500
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	140,500

**Sec. 119.** 2001 2nd sp.s. c 8 s 303 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

Local Toxics Grants to Locals for Cleanup and Prevention (88-2-008)

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

(1) The reappropriation in this section is provided solely for projects under contract on or before June 30, 2001. Reappropriated funds not associated with contracted projects shall lapse on June 30, 2001. The office of financial management may grant waivers from this lapse requirement for specific projects upon findings of exceptional circumstances after notification of the chairs of the house of representatives capital budget committee and senate ways and means committee.

(2) The department shall submit a report to the office of financial management and house of representatives capital budget committee and senate ways and means committee by December 1, 2001, listing all projects funded from this section.

(3) The department of ecology shall offer the port of Ridgefield a funding package totaling \$8,400,000 to conduct an emergency cleanup action on port-owned property. A portion of the appropriation in this section shall be combined with funds from the appropriation to the department from the state toxics control account in the omnibus operating budget for the 2001-2003 biennium to provide a funding package consisting of sixty-five percent grant and thirty-five percent loan. The terms of the loan shall provide for repayment by the port of Ridgefield commencing ten years from the effective date of this section and is contingent upon an independent financial audit conducted at the direction of the department to determine the port's ability to repay the loan. It is the intent of the legislature to support necessary action by the port of Ridgefield to protect public health and the environment without jeopardizing the port's financial standing.

Reappropriation:

Local Toxics Control Account—State . . . . . \$ 20,749,772

Appropriation:

Local Toxics Control Account—State . . . . . \$ ((50,000,000))  
68,500,000

Prior Biennia (Expenditures) . . . . . \$ 84,103,008

Future Biennia (Projected Costs) . . . . . \$ 0

TOTAL . . . . . \$ ((154,852,780))  
173,352,780

Sec. 120. 2001 2nd sp.s. c 8 s 311 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

Water Pollution Control Revolving Account (02-4-002)

Reappropriation:

Water Pollution Control Revolving Account—

Federal . . . . . \$ \$7,996,771

Appropriation:

Water Pollution Control Revolving Account—

State . . . . . \$ ((113,835,792))  
157,135,792

Water Pollution Control Revolving Account—

Federal . . . . . \$ 45,277,010

Subtotal Appropriation . . . . . \$ ((159,112,802))  
202,412,802

Prior Biennia (Expenditures) . . . . . \$ 0

Future Biennia (Projected Costs) . . . . . \$ 467,108,040

TOTAL . . . . . \$ ((626,220,842))  
677,517,613

Sec. 121. 2001 2nd sp.s. c 8 s 313 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

Referendum 38 Water Supply Facilities (02-4-006)

The appropriation in this section is subject to the following conditions and limitations:

(1) \$250,000 of the appropriation is provided solely to study the development of the Lake Wenatchee water storage project.

(2) \$300,000 of the appropriation is provided solely to the department of ecology to develop a plan for restoration of stream flow and fish passage in Manastash creek, Kittitas county, through the conversion of surface water irrigation diversions to ground water withdrawals. If the plan determines that conversion of withdrawals from surface water to ground water would restore instream flow and provide benefits for fish, the department shall expedite processing of water right change applications to accomplish this conversion.

Appropriation:

State and Local Improvements Revolving	
Account (Water Supply Facilities)—State .. \$	6,000,000
Prior Biennia (Expenditures) .....	\$ 0
Future Biennia (Projected Costs) .....	\$ 12,000,000
TOTAL .....	\$ 18,000,000

**Sec. 122.** 2001 2nd sp.s. c 8 s 344 (uncodified) is amended to read as follows:  
**FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

Boating Facilities Projects (02-4-001)

Appropriation:

Recreation Resources Account—State .....	\$	<del>((8,318,013))</del>
		<u>6,934,013</u>
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	40,300,368
TOTAL .....	\$	<del>((48,618,381))</del>
		<u>47,234,381</u>

**Sec. 123.** 2001 2nd sp.s. c 8 s 346 (uncodified) is amended to read as follows:  
**FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

Nonhighway Road and Off-Road Vehicle Activities (NOVA) (02-4-002)

(1) The appropriation in this section for the nonhighway and off-road vehicle program under RCW 46.09.170(1)(d)(i) is subject to the following conditions and limitations: ~~((Fifty percent))~~ A portion of the new appropriation ~~((is provided solely))~~ may be used for grants to projects to research, develop, publish, and distribute informational guides and maps of nonhighway and off-road vehicle trails and associated facilities meeting the requirements, guidelines, spirit, and intent of the federal Americans with disabilities act.

(2) The appropriation in this section for the nonhighway and off-road vehicle program under RCW 46.09.170(1)(d)(ii) is subject to the following conditions and limitations: The portion of the new appropriation that applies to grants for capital facilities ~~((is provided solely))~~ may be used for grants to projects that meet the requirements, guidelines, spirit, and intent of the federal Americans with disabilities act and do not compromise or impair sensitive natural resources. The portion of the new appropriation that applies to grants for management, maintenance, and operation of existing off-road vehicle recreation facilities may be used to bring the facilities into compliance with the requirements, guidelines, spirit, and intent of the federal Americans with disabilities act.

(3) The appropriation in this section for the nonhighway and off-road vehicle program under RCW 46.09.170(1)(d)(iii) is subject to the following conditions and limitations: (a) \$175,000 is provided solely for the interagency committee for

outdoor recreation to contract with an independent entity to study the source and make recommendations on the distribution and use of funds provided to off-road vehicle and nonhighway road recreational activities under RCW 46.09.170. The study shall determine the relative portion of the motor vehicle fuel tax revenues that are attributable to vehicles operating off-road or on nonhighway roads for recreational purposes as provided in RCW 46.09.170. The study shall include the types of vehicles and location of their use, the types of recreational activities, the types of recreational facilities used, and the recreational use of forest roads relative to other, nonrecreational uses. The interagency committee for outdoor recreation shall review the analysis and submit a report to the standing committees of the legislature, including recommendations regarding amendments to RCW 46.09.170 to: ~~((a))~~ (i) Allocate revenues consistent with the relative proportion of the uses generating such revenues, and ~~((b))~~ (ii) ensure funding for existing off-road vehicle facilities operated by the state parks and recreation commission and local governments. The report shall be submitted no later than December 1, 2002. (b) Funds may be expended for nonhighway road recreation facilities which may include recreational trails that are accessed by nonhighway roads and are intended solely for nonmotorized recreational uses.

Appropriation:

NOVA Program Account—State . . . . .	\$	5,527,551
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	23,559,218
TOTAL . . . . .	\$	29,086,769

Sec. 124. 2001 2nd sp.s. c 8 s 348 (uncodified) is amended to read as follows:

**FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

Washington Wildlife and Recreation Program (02-4-003)

The appropriation in this section for the wildlife and recreation program under chapter 43.99A RCW and RCW 43.99A.040 is subject to the following conditions and limitations:

(1) The new appropriation is provided for the approved list of projects included in LEAP capital document No. 2001-24, as developed on June 7, 2001, and LEAP capital document No. 2002-21, as developed on March 12, 2002.

(2) The department of natural resources shall manage lands acquired through project No. 00-1427 "North Bay NAP" as a natural resources conservation area under chapter 79.71 RCW.

Appropriation:

Outdoor Recreation Account—State . . . . .	\$	22,500,000
Habitat Conservation Account—State . . . . .	\$	22,500,000
Subtotal Appropriation . . . . .	\$	45,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	180,000,000

TOTAL ..... \$ 225,000,000

**Sec. 125.** 2001 2nd sp.s. c 8 s 350 (uncodified) is amended to read as follows:  
**FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

Land and Water Conservation Fund (LWCF) (02-4-005)

The appropriation in this section is subject to the following conditions and limitations:

(1) \$1,500,000 of the recreation resources account—federal is appropriated for projects chosen by the interagency committee for outdoor recreation.

(2) By January 1, 2002, the interagency committee for outdoor recreation shall provide a report to the legislature that:

(a) Describes those projects funded subject to subsection (1) of this section; and

(b) Recommends legislation creating a competitive process for the selection of projects that will result in a list of projects to be submitted to the legislature for its approval.

Appropriation:

Recreation Resources Account—Federal .....	\$	<del>((2,500,000))</del>
		<u>7,500,000</u>
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	<del>((2,500,000))</del>
		<u>7,500,000</u>

**\*Sec. 126.** 2001 2nd sp.s. c 8 s 354 (uncodified) is amended to read as follows:

**FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

Salmon Recovery (02-4-007)

The appropriation in this section is subject to the following conditions and limitations:

(1) Activities funded through grants provided in this section shall be consistent with the salmon recovery funding board’s goals, mission, and responsibilities.

(2) Jobs for the environment projects submitted by lead entities are eligible to receive funding, including wages for jobs for the environment participants.

**(3) \$649,000 of the state building construction account—state appropriation is provided solely to the people for salmon partnership to coordinate and assist local, community-based salmon recovery efforts in Washington state. This funding shall be used to: (a) Match federal and private fund sources in order to design and implement not less than twenty on-the-ground projects with community-based restoration groups; (b) implement not less than twelve training workshops throughout the state on state monitoring protocols, project design and management, soliciting and retaining volunteers, and other technical topics**

related to salmon restoration and enhancement; (c) coordinate a minimum of three technical forums for information exchange between community-based organization staff; and (d) provide up to 1,500 hours of technical assistance to community-based organizations engaged in salmon restoration and enhancement, including direct consultations on utilizing limiting factors in project identification, obtaining necessary permits, and working with landowners. In addition, people for salmon must work with regional fisheries enhancement groups, conservation districts, landowners, tribes, and the business community to develop and sponsor a yearly volunteer expo in order to provide an educational exchange, workshops, and products fair for all organizations engaged in salmon restoration and enhancement and an annual statewide salmon day celebration to engage citizens, businesses, and schools in salmon recovery.

Appropriation:

General Fund—Federal . . . . .	\$	((27,642,000))
		<u>48,642,000</u>
State Building Construction Account—State . . . . .	\$	((28,000,000))
		<u>27,000,000</u>
Subtotal Appropriation . . . . .	\$	((55,642,000))
		<u>75,642,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	264,000,000
TOTAL . . . . .	\$	((318,189,000))
		<u>339,642,000</u>

\*Sec. 126 was partially vetoed. See message at end of chapter.

**NEW SECTION.** Sec. 127. A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION**

Firearms and Archery Range (FARR) Program (02-0-001)

Appropriation:

Firearms Range Account—State . . . . .	\$	400,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	400,000

**Sec. 128.** 2001 2nd sp.s. c 8 s 387 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Hatchery Reform Facility Retrofits (02-1-001)

The appropriation in this section is subject to the conditions and limitations of sections 905 and 906 of this act.

Appropriation:



General Fund—Federal .....	\$	((10,000,000))
		<u>2,000,000</u>
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	60,000,000
TOTAL .....	\$	((70,000,000))
		<u>62,000,000</u>

**NEW SECTION. Sec. 129.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Deep Water Slough Restoration (98-2-021)

Appropriation:

General Fund—Federal .....	\$	155,800
State Building Construction Account—State .....	\$	407,000
Subtotal Appropriation .....	\$	562,800
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	562,800

**Sec. 130.** 2001 2nd sp.s. c 8 s 388 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Forest and Fish Road Upgrade and Abandonment on Agency Lands (02-1-003)

The appropriation in this section is subject to the conditions and limitations of sections 905 and 906 of this act.

Appropriation:

General Fund—Federal .....	\$	((1,900,000))
		<u>200,000</u>
State Building Construction Account—State .....	\$	500,000
Subtotal Appropriation .....	\$	((2,400,000))
		<u>700,000</u>
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	11,600,000
TOTAL .....	\$	((14,000,000))
		<u>12,300,000</u>

**Sec. 131.** 2001 2nd sp.s. c 8 s 390 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Facility and Infrastructure Standards and Renovations (02-1-009)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the conditions and limitations of sections 905 and 906 of this act.

(2) \$305,000 of the appropriation in this section shall be used to replace or renovate the caretaker residence and construct pheasant rearing pens at the Lewis county game farm.

(3) The department shall expend the \$300,000 wildlife account—state appropriation to construct a capture and acclimation pond at Grandy Creek.

(4) \$871,000 of the state building construction account—state appropriation is provided solely for renovation and reconstruction of the Samish hatchery.

Appropriation:

General Fund—Federal . . . . .	\$	<del>((3,100,000))</del>
		<u>700,000</u>
General Fund—Private/Local . . . . .	\$	<del>((1,500,000))</del>
		<u>350,000</u>
Aquatic Lands Enhancement Account—State . . . . .	\$	150,000
State Building Construction Account—State . . . . .	\$	7,571,000
Wildlife Account—State . . . . .	\$	300,000
Subtotal Appropriation . . . . .	\$	<del>((12,621,000))</del>
		<u>9,071,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	46,420,000
TOTAL . . . . .	\$	<del>((58,741,000))</del>
		<u>55,491,000</u>

**Sec. 132.** 2001 2nd sp.s. c 8 s 392 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Endangered Species Act Compliance on Agency Lands (02-2-002)

The appropriation in this section is subject to the conditions and limitations of sections 905 and 906 of this act.

Appropriation:

General Fund—Federal . . . . .	\$	<del>((8,800,000))</del>
		<u>4,300,000</u>
State Building Construction Account—State . . . . .	\$	1,000,000
Subtotal Appropriation . . . . .	\$	<del>((8,800,000))</del>
		<u>5,300,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	39,200,000
TOTAL . . . . .	\$	<del>((49,000,000))</del>
		<u>44,500,000</u>

**NEW SECTION. Sec. 133.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Local and Regional Salmon Recovery Planning (03-H-001)

The water quality account—state appropriation is provided solely to fund grants to lead entities established under chapter 77.85 RCW or watershed planning units established under chapter 90.82 RCW that agree to coordinate the development of comprehensive local and regional salmon recovery plans.

Appropriation:

Water Quality Account—State . . . . .	\$	1,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,000,000

**Sec. 134.** 2001 2nd sp.s. c 8 s 416 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF NATURAL RESOURCES**

Land Bank (02-2-013)

Appropriation:

Resources Management Cost Account—State . . . . .	\$	<del>((4,000,000))</del>
		<u>10,000,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	18,000,000
TOTAL . . . . .	\$	<del>((22,000,000))</del>
		<u>28,000,000</u>

NEW SECTION. **Sec. 135.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF NATURAL RESOURCES**

Natural Resources Real Property Replacement Program (03-2-001)

The appropriation in this section is subject to the following conditions and limitations: The department and trust beneficiaries shall study options for increasing revenues to the trust. The study shall include costs and benefits over time for replacing trust lands with various trust assets including depositing funds from land transfers and sales into the permanent funds. The department shall report on the study to the legislature by December 1, 2002.

Appropriation:

Natural Resources Real Property Replacement Account—State . . . . .	\$	10,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	10,000,000

**Sec. 136.** 2001 2nd sp.s. c 8 s 427 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF NATURAL RESOURCES**

Larch Mountain Road Reconstruction (01-S-001)

The appropriation in this section is provided solely to reconstruct the Larch Mountain road to provide safe access to the Larch Mountain correction camp and

department-managed state forest lands. Expenditure of the \$1,000,000 state building and construction account appropriation is contingent upon the department of natural resources utilizing the nonappropriated access road revolving fund to complete reconstruction of the Larch Mountain road. The expenditure of total state appropriated funds for this project shall not exceed \$1,000,000.

Appropriation:

Access Road Revolving Fund—Nonappropriated . . . . .	\$	((3,000,000))
		<u>2,000,000</u>
State Building Construction Account—State . . . . .	\$	1,000,000
Subtotal Appropriation . . . . .	\$	((4,000,000))
		<u>3,000,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	((4,000,000))
		<u>3,000,000</u>

Sec. 137. 2001 2nd sp.s. c 8 s 505 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL**

Spokane Crime Laboratory - Design (02-2-013)

Appropriation:

State Building Construction Account—State . . . . .	\$	((400,000))
		<u>635,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	((7,950,000))
		<u>7,715,000</u>
TOTAL . . . . .	\$	8,350,000

Sec. 138. 2001 2nd sp.s. c 8 s 506 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL**

Vancouver Crime Laboratory - ((~~Pre~~design)) Design (02-2-010)

Appropriation:

State Building Construction Account—State . . . . .	\$	((130,000))
		<u>365,000</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	((7,400,000))
		<u>7,165,000</u>
TOTAL . . . . .	\$	7,530,000

Sec. 139. 2001 2nd sp.s. c 8 s 602 (uncodified) is amended to read as follows:

**FOR THE STATE BOARD OF EDUCATION**

State School Construction Assistance Grants (02-4-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) \$200,000 from this appropriation is provided to fund up to two FTEs in the office of state fire marshal to exclusively review K-12 construction documents, provide on-site construction inspections, and final acceptance inspections for fire and life safety in accordance with the state building code. It is the intent of this appropriation to provide these services only to those districts that are located in counties without qualified review and inspection capabilities and that request such services.

(2) Of the fiscal year 2002 appropriation, \$80,000 is provided solely for skills centers study and survey.

(3) For state assistance grants starting July 1, 2001, for purposes of calculating square foot eligibility, kindergarten student headcount shall not be reduced by fifty percent.

(4) \$5,400,000 from this appropriation is provided for skills centers capital improvements. Skills centers shall submit a budget plan to the state board of education and the appropriate fiscal committees of the legislature for proposed expenditures and the proposed expenditures shall conform with state board of education rules and procedures for reimbursement of capital items. Funds not expended by June 30, 2003, shall lapse.

~~(5)((a) \$30,530,000 of this appropriation is provided solely to enhance the state contribution as follows:~~

~~—(i) For the state board to increase the eligible square feet allocation by 1.5 square feet for grades 1-12; and~~

~~—(ii) For the state board to increase the area cost allowance by \$8 per square foot for grades K-12.~~

~~—(b) If chapter . . . (House Bill No. 2173), Laws of 2001 2nd sp. sess. is not enacted by June 30, 2001, both the appropriation and the state board's authority to increase the eligible square feet and area cost allowance in this subsection (5) shall lapse)) \$4,826,681 of this appropriation is provided solely for Blair elementary school in the Medical Lake school district due to its unique circumstances of being in a federal impact area and to obtain federal assistance.~~

Appropriation:

Common School Construction		
Account—State ((FY 2002) . . . . .	\$	<del>212,040,308</del>
<del>Common School Construction</del>		
<del>Account—State (FY 2003) . . . . .</del>	<del>\$</del>	<del>226,846,421</del>
		<u>344,922,079</u>
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	1,831,522,031
TOTAL . . . . .	\$	((2,269,909,260))
		<u>2,176,444,110</u>

NEW SECTION. Sec. 140. A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR EASTERN WASHINGTON UNIVERSITY**

Infrastructure Savings (03-1-001)

Projects that are completed in accordance with section 915 of this act may have their remaining funds transferred to this appropriation for other preservation projects approved by the office of financial management.

Appropriation:

State Building Construction Account—State . . . . .	\$	1
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1

Sec. 141. 2001 2nd sp.s. c 8 s 624 (uncodified) is amended to read as follows:

**FOR THE UNIVERSITY OF WASHINGTON**

UW Bothell 2A/Cascadia Community College (00-2-015)

The reappropriation in this section is subject to the conditions and limitations under sections 902 through 904 of this act. No money from this reappropriation may be expended that would be inconsistent with the recommendations of the higher education coordinating board and the project design, scope, and schedule approved by the office of financial management.

Reappropriation:

State Building Construction Account—		
State . . . . .	\$	<del>((29,123,099))</del>
		<u>8,666,030</u>
Prior Biennia (Expenditures) . . . . .	\$	<del>((20,976,901))</del>
		<u>38,183,970</u>
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	<del>((50,100,000))</del>
		<u>46,850,000</u>

Sec. 142. 2001 2nd sp.s. c 8 s 638 (uncodified) is amended to read as follows:

**FOR THE UNIVERSITY OF WASHINGTON**

UW Medical Center Improvements (99-2-010)

Reappropriation:

Higher Education Construction		
Account—State . . . . .	\$	30,000,000

Appropriation:

<u>Higher Education Construction</u>		
<u>Account—State . . . . .</u>	\$	<u>2,100,000</u>
Prior Biennia (Expenditures) . . . . .	\$	50,000,000
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	<del>((80,000,000))</del>
		<u>82,100,000</u>

**Sec. 143.** 2001 2nd sp.s. c 8 s 661 (uncodified) is amended to read as follows:  
**FOR WASHINGTON STATE UNIVERSITY**

WSU Vancouver - Multimedia/Electronic Communication Classroom Building: (02-2-907)

The appropriation in this section is subject to the conditions and limitations of sections 902 through 904 of this act. No money from the appropriation may be expended that would be inconsistent with the recommendations of the higher education coordinating board and the project design, scope, and schedule approved by the office of financial management.

Appropriation:

State Building Construction Account—State . . . . .	\$	((12,900,000
<del>Washington State University Building Account—State . . . . .</del>	<del>State . . . . .</del>	<del>3,000,000</del>
<del>..... \$</del>		<del>3,000,000</del>
<del>Subtotal Appropriation . . . . .</del>	<del>))</del>	15,900,000
Prior Biennia (Expenditures) . . . . .	\$	600,000
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	16,500,000

**Sec. 144.** 2001 2nd sp.s. c 8 s 701 (uncodified) is amended to read as follows:  
**FOR CENTRAL WASHINGTON UNIVERSITY**

Omnibus - Program (02-2-002)

(1) The appropriation in this section is subject to the conditions and limitations of sections 905 and 906 of this act.

(2) \$350,000 of this appropriation is provided for interior classroom improvements within the Olympic south building of Pierce College at Fort Steilacoom.

Appropriation:

Central Washington University Capital Projects		
Account—State . . . . .	\$	3,750,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	12,559,000
TOTAL . . . . .	\$	16,309,000

**Sec. 145.** 2001 2nd sp.s. c 8 s 755 (uncodified) is amended to read as follows:  
**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Columbia Basin College - Electrical Substation (~~((99-1-004))~~) (99-1-004)

Reappropriation:

State Building Construction Account—State . . . . .	\$	770,134
Prior Biennia (Expenditures) . . . . .	\$	229,866
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,000,000

**Sec. 146.** 2001 2nd sp.s. c 8 s 784 (uncodified) is amended to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Cascadia Community College: Development (00-2-501)

The reappropriation in this section is subject to the review and allotment procedures under sections 902 through 904, and 906 of this act. No money may be expended that would be inconsistent with the recommendations of the higher education coordinating board and the project design, scope, and schedule approved by the office of financial management.

Reappropriation:

State Building Construction Account—	
State .....	\$ ((26,581,595))
	<u>7,904,031</u>
Prior Biennia (Expenditures) .....	\$ ((23,518,405))
	<u>38,945,969</u>
Future Biennia (Projected Costs) .....	\$ 0
TOTAL .....	\$ ((50,100,000))
	<u>46,850,000</u>

**Sec. 147.** 2001 2nd sp.s. c 8 s 824 (uncodified) is amended to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Technology Institute Partner College Computer Labs (~~((01-S-003))) (01-2-689)~~

The appropriation in this section is provided to construct and equip three computer science and language labs, an approximate size being 1,200 square feet, one at each of the following college districts: Highline, Olympic, and South Puget Sound.

Appropriation:

State Building Construction Account—State .....	\$ 1,500,000
Prior Biennia (Expenditures) .....	\$ 0
Future Biennia (Projected Costs) .....	\$ 0
TOTAL .....	\$ 1,500,000

**Sec. 148.** 2001 2nd sp.s. c 8 s 828 (uncodified) is amended to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Tacoma Science Building: New Facility (~~((01-S-001))) (01-2-687)~~

The appropriation in this section is provided to conduct a predesign of the project described in this section in accordance with the predesign manual published by the office of financial management. Future appropriations for this project are subject to the submittal of completed predesign requirements on or before July 1, 2002.

Appropriation:

State Building Construction Account—State .....	\$ 100,000
Prior Biennia (Expenditures) .....	\$ 0



Future Biennia (Projected Costs) . . . . .	\$	18,300,000
TOTAL . . . . .	\$	18,400,000

**Sec. 149.** 2001 2nd sp.s. c 8 s 829 (uncodified) is amended to read as follows:  
**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Green River Community College - Sciences Building: New Facility (~~((01-5-002))~~) (01-2-688)

The appropriation in this section is provided to conduct a predesign of the project described in this section in accordance with the predesign manual published by the office of financial management. Future appropriations for this project are subject to the submittal of completed predesign requirements on or before July 1, 2002.

Appropriation:

State Building Construction Account—State . . . . .	\$	100,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	18,300,000
TOTAL . . . . .	\$	18,400,000

**NEW SECTION. Sec. 150.** A new section is added to 2001 2nd sp.s. c 8 (uncodified) to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Infrastructure Savings (03-1-001)

Projects that are completed in accordance with section 915 of this act may have their remaining funds transferred to this appropriation for other preservation projects approved by the office of financial management.

Appropriation:

State Building Construction Account—State . . . . .	\$	1
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1

**Sec. 151.** 2001 2nd sp.s. c 8 s 799 (uncodified) is amended to read as follows:  
**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

South Seattle Community College - Building A: Replacement (02-1-217)

The appropriation in this section is subject to the review and allotment procedures under sections 902 and 903 of this act.

Appropriation:

<del>((Community and Technical College Capital Projects</del> <del>Account—State))</del> <u>State Building</u> <u>Construction Account—State</u> . . . . .	\$	5,477,400
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	5,477,400

Sec. 152. 2001 2nd sp.s. c 8 s 803 (uncodified) is amended to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Pierce College Fort Steilacoom - Portables: Replacement (02-1-223)

The appropriation in this section is subject to the review and allotment procedures under sections 902 and 903 of this act.

Appropriation:

~~((Community and Technical College Capital Projects~~  


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~~Account—State))~~ State Building

<u>Construction Account—State</u> .....	\$	2,452,100
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	2,452,100

Sec. 153. 2001 2nd sp.s. c 8 s 804 (uncodified) is amended to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Lower Columbia College - Physical Science Portables: Replacement (02-1-226)

The appropriation in this section is subject to the review and allotment procedures under sections 902 and 903 of this act.

Appropriation:

~~((Community and Technical College Capital Projects~~  


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~~Account—State))~~ State Building

<u>Construction Account—State</u> .....	\$	1,959,800
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	1,959,800

Sec. 154. 2001 2nd sp.s. c 8 s 813 (uncodified) is amended to read as follows:

**FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

Grays Harbor Community College - Library: Renovation (02-1-311)

The appropriation in this section is subject to the review and allotment procedures under sections 902 and 903 of this act.

Appropriation:

~~((Community and Technical College Capital Projects~~  


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~~Account—State))~~ State Building

<u>Construction Account—State</u> .....	\$	4,579,500
Prior Biennia (Expenditures) .....	\$	0
Future Biennia (Projected Costs) .....	\$	0
TOTAL .....	\$	4,579,500

Sec. 155. 2001 2nd sp.s. c 8 s 907 (uncodified) is amended to read as follows:

**ACQUISITION OF PROPERTIES AND FACILITIES THROUGH FINANCIAL CONTRACTS.** The following agencies may enter into financial contracts, paid from any funds of an agency, appropriated or nonappropriated, 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. When securing properties under this section, agencies shall use the most economical financial contract option available, including long-term leases, lease-purchase agreements, lease-development with option to purchase agreements or financial contracts using certificates of participation. Expenditures made by an agency for one of the indicated purposes before the issue date of the authorized financial contract ~~((may))~~ and any certificates of participation therein are intended to be reimbursed from proceeds of the financial contract and any certificates of participation therein to the extent provided in the agency's financing plan approved by the state finance committee.

The director of general administration shall ensure that the clustering of state facilities and the collocation and consolidation of state agencies take place where such configurations are economical and consistent with agency space needs. Agencies shall assist the department of general administration with facility collocation and consolidation efforts.

State agencies may enter into agreements with the department of general administration and the state treasurer's office to develop requests to the legislature for acquisition of properties and facilities through financial contracts. The agreements may include charges for services rendered.

(1) Secretary of state:

(a) Enter into a financing contract in the amount of \$13,582,200 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase or construct a regional archives building in eastern Washington to be sited on the Eastern Washington University campus in Cheney.

(b) Enter into a financing contract in the amount of \$653,800 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase technology equipment and software for an electronic data archive, provided that authority to expend funding for acquisition of technology equipment and software associated with the electronic data archive is conditioned on compliance with section 902 of the 2001-2003 operating budget bill (information services projects).

(2) Department of general administration:

(a) Enter into a financing contract in the amount of \$3,956,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to expand the existing Isabella Bush records center in Tumwater for use by state agencies.

(b) Enter into a financing contract in the amount of \$35,656,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to purchase two existing office buildings and associated land in Tacoma for use by the department of social and health services.

(c) Enter into a financing contract for an amount approved by the office of financial management for costs and financing expenses and required reserves pursuant to chapter 39.94 RCW to lease develop or lease purchase a state office building of 150,000 to 200,000 square feet on state-owned property in Tumwater according to the terms of the agreement with the Port of Olympia when the property was acquired or within the preferred development/leasing areas in Thurston county. The building shall be constructed and financed so that agency occupancy costs will not exceed comparable private market rental rates. The comparable general office space rate shall be calculated based on the three latest Thurston county leases of new space of at least 100,000 rentable square feet adjusted for inflation as determined by the department of general administration. The department of general administration shall coordinate with potential state agency tenants whose current lease expire near the time of occupancy so that buyout of current leases do not add to state expense. The office of financial management shall certify to the state treasurer: (i) The project description and dollar amount; and (ii) that all requirements of this subsection (2)(c) have been met.

(3) ~~((Military department:~~

~~— (a) Enter into a financing contract in the amount of \$653,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to construct additional space at the Spokane combined public safety training center.~~

~~— (b) Enter into a financing contract in the amount of \$807,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to construct additional space at the Bremerton readiness center.~~

~~— (4)) Department of corrections:~~

Enter into a financing contract in the amount of \$4,588,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase or construct a correctional industries transportation services warehouse.

~~((5)) (4) Department of veterans affairs:~~

(a) Enter into a financing contract in the amount of \$12,000,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to construct a skilled nursing home in Retsil.

(b) Enter into a financing contract in an amount not to exceed \$5,000,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase a state veterans' home in eastern Washington.

~~((6)) (5) State parks and recreation: It is the intent of the legislature that the operating revenues of the department provide the primary source of funds necessary to meet financing contract obligations for the projects financed under this authority. In addition, state parks and recreation is authorized to pledge to make payments from appropriated funds pursuant to chapter 39.94 RCW in order to:~~

(a) Enter into financing contracts in the amount of \$1,500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase and install cabins and yurts statewide.

(b) Enter into a financing contract in an amount not to exceed \$2,500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for development of a multi-purpose dining and meeting facility at Fort Worden state park.

~~((7))~~ (6) Community and technical colleges:

(a) Enter into a financing contract on behalf of Edmonds Community College in the amount of \$4,106,300 plus financing expenses and reserves pursuant to chapter 39.94 RCW to renovate Lynnwood hall and Montlake Terrace hall.

(b) Enter into a financing contract on behalf of Edmonds Community College in the amount of \$3,134,900 plus financing expenses and reserves pursuant to chapter 39.94 RCW to construct an addition to the student center building.

(c) Enter into a financing contract on behalf of Highline Community College in the amount of \$15,006,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to replace the student union building.

(d) Enter into a financing contract on behalf of Lower Columbia College in the amount of \$2,000,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for up to \$2,500,000 to purchase the maple terrace apartments.

(e) Enter into a financing contract on behalf of Everett Community College in the amount of \$1,500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for remodeling of the fitness center.

(f) Enter into a financing contract on behalf of Wenatchee Valley College in the amount of \$500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase two buildings and property contiguous to the college campus.

(g) Enter into a financing contract on behalf of Olympic College in the amount of \$900,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for development of off-street student parking.

(h) Enter into a financing contract on behalf of Renton Technical College in the amount of \$1,000,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for the purchase of approximately ten acres within the district boundary to support a future relocation of apprenticeship programs off the main campus.

(i) Enter into a financing contract on behalf of Bellevue community college in the amount of \$16,000,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for the construction of a structured parking garage.

~~((8))~~ (7) Central Washington University: Enter into a financing contract in the amount of \$5,700,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for the Central Washington University/Edmonds Community College center.

~~((9))~~ (8) University of Washington:

(a) Enter into a financing contract in the amount of \$7,500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for renovation of Sand Point building 5.

(b) Enter into a financing contract in the amount of \$5,500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for renovation of Sand Point building 29.

(c) Enter into a financing contract in the amount of \$1,600,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to complete the current, phased renovation of Sand Point building 5.

(9) The Evergreen State College: Enter into a financing contract in the amount of \$1,610,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for expansion of the campus children's center.

**NEW SECTION. Sec. 156.** The following acts or parts of acts are each repealed:

- (1) 2001 2nd sp.s. c 8 s 182 (uncodified);
- (2) 2001 2nd sp.s. c 8 s 184 (uncodified);
- (3) 2001 2nd sp.s. c 8 s 186 (uncodified);
- (4) 2001 2nd sp.s. c 8 s 187 (uncodified); and
- (5) 2001 2nd sp.s. c 8 s 421 (uncodified).

**PART 2**

**JOB CREATION AND INFRASTRUCTURE PROGRAM**

**NEW SECTION. Sec. 201.** The governor and legislature find that the state of Washington is faced with a serious economic downturn following the tragic events of September 11, 2001, and that creating jobs through capital construction will help stabilize and strengthen the state's long-term economy. The dollar amounts specified in this Part 2 are appropriated and authorized to be incurred for capital projects during the period ending June 30, 2003, for the purposes of stimulating the state economy through state construction projects. Except where otherwise stated, it is expected that the appropriations for the job creation and infrastructure program shall be expended primarily for direct costs of those projects.

**NEW SECTION. Sec. 202. FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

Local/Community Projects (2002-S-005): Job Creation and Infrastructure Projects

The following projects are eligible for funding:

Projects	Amount
Asia Pacific center	\$ 50,000
Benton county jail	\$ 2,000,000
Bremerton maritime park	\$ 500,000
Edmonds waterfront park	\$ 300,000

Grace Cole memorial park/Brookside creek	\$	400,000
Kent station infrastructure improvements	\$	900,000
Mill creek active use ball fields	\$	1,000,000
Nathan Chapman trail	\$	300,000
Penny creek/9th Avenue crossing	\$	400,000
Port Angeles skills center/skills consortium	\$	3,000,000
Puget Sound environmental learning center	\$	2,000,000
Ridgefield wastewater treatment	\$	585,000
Sammamish surface water treatment	\$	1,500,000
Shoreline historical museum	\$	28,000
Snohomish county children's museum	\$	300,000
Soundview park/playground	\$	200,000
Stewart heights pool project	\$	500,000
Sundome seating expansion - Yakima	\$	1,250,000
West central community center childcare project	\$	500,000
William H. Factory small business incubator	\$	250,000
Yakima ballfields	\$	1,250,000
TOTAL	\$	17,213,000

Appropriation:

State Building Construction Account—State	\$	17,213,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	17,213,000

**NEW SECTION. Sec. 203. FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

City of Grandview: Job Creation and Infrastructure Development (2002-S-006)

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided for allocation by the department to the city of Grandview for infrastructure development, including but not limited to streets, water, sewer, and other utilities associated with the siting of a warehouse distribution center. If the development agreement for the warehouse distribution center has not been signed by May 15, 2002, the appropriation in this section shall lapse.

Appropriation:

State Building Construction Account—State	\$	1,000,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	1,000,000

**NEW SECTION. Sec. 204. FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

Inland Northwest Regional Sports and Recreational Project

The appropriation in this section is subject to the following conditions and limitations: The funds shall be retained in allotment reserve until the office of financial management approves a plan by a nonprofit organization regarding development and management of this project. This review shall ensure that the governing structure of the nonprofit organization contains broad community representation and control and that there will be significant community benefits realized from the project.

Appropriation:

State Building Construction Account—State . . . . .	\$	1,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,500,000

**NEW SECTION. Sec. 205. FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT**

Highline School District Aircraft Noise Mitigation (03-H-001)

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

- (1) The port of Seattle and the federal aviation administration must provide their share before the state appropriation may be used.
- (2) The appropriations do not commit the state to make future appropriations for this program.

Appropriation:

State Building Construction Account—State . . . . .	\$	600,000
Education Construction Account—State . . . . .	\$	4,400,000
Subtotal . . . . .	\$	5,000,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	5,000,000

**NEW SECTION. Sec. 206. FOR THE DEPARTMENT OF GENERAL ADMINISTRATION**

Engineering and Architectural Services - Job Creation and Infrastructure Projects (03-1-001)

Appropriation:

State Building Construction Account—State . . . . .	\$	750,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	750,000

**NEW SECTION. Sec. 207. FOR THE MILITARY DEPARTMENT**

Job Creation and Infrastructure Projects (03-1-001)



The appropriation in this section is subject to the following conditions and limitations: The following projects are eligible for funding:

Projects	Amount
Port Orchard readiness center . . . . . \$	785,000
Anacortes readiness center . . . . . \$	825,000
Ephrata readiness center . . . . . \$	390,000
TOTAL . . . . . \$	2,000,000

Appropriation:

State Building Construction Account—State . . . . . \$	2,000,000
Prior Biennia (Expenditures) . . . . . \$	0
Future Biennia (Projected Costs) . . . . . \$	0
TOTAL . . . . . \$	2,000,000

**NEW SECTION. Sec. 208. FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

**Job Creation and Infrastructure Projects (03-1-001)**

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Projects	Amount
Rainier school: Emergency power improvements . . . . . \$	65,000
Rainier School: Fire hydrant improvements . . . . . \$	410,000
Eastern state hospital: Replace failed sewer lines . . . . . \$	135,000
Naselle youth camp: Roofing repairs . . . . . \$	135,000
Ridgeview group home: Replace roofing . . . . . \$	85,000
Rainier school: Steam distribution system repairs . . . . . \$	200,000
Parke Creek group home: Remodel and improvements . . \$	150,000
Woodinville treatment center: Replace exterior windows and security improvements . . . . . \$	60,000
Lakeland village: Emergency power distribution to north campus . . . . . \$	110,000
Lakeland village: Replace primary electrical feed and switchgear . . . . . \$	85,000
Naselle youth camp: Stabilize hillsides . . . . . \$	100,000
Sunrise group home: Replace exterior windows and security improvements . . . . . \$	135,000
Sunrise group home: Replace vinyl siding . . . . . \$	85,000

(2) The department shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

State Building Construction Account—State . . . . . \$	1,000,000
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Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,000,000

**NEW SECTION. Sec. 209. FOR THE DEPARTMENT OF CORRECTIONS**

Job Creation and Infrastructure Projects (03-1-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Projects		Amount
Washington state penitentiary roof repairs . . . . .	\$	426,150
McNeil Island ferry slip repairs . . . . .	\$	165,000
Reynolds work release fire repairs . . . . .	\$	56,000
Tacoma prerelease roof repairs . . . . .	\$	90,000
Clallam Bay exterior improvements . . . . .	\$	334,500
McNeil Island roof repairs . . . . .	\$	90,699
Pine Lodge prerelease improvements . . . . .	\$	192,500
Monroe corrections center improvements . . . . .	\$	56,000
Ahtanum View exterior improvements . . . . .	\$	193,760
Airway Heights exterior improvements . . . . .	\$	80,000
Washington corrections center roof repairs . . . . .	\$	1,071,870
Olympic energy plant improvements . . . . .	\$	179,000
McNeil Island roof repairs . . . . .	\$	146,700

(2) The department shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

State Building Construction Account—State . . . . .	\$	1,604,609
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	1,604,609

**Sec. 210.** 2001 2nd sp.s. c 8 s 265 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF CORRECTIONS**

Local Criminal Justice Facilities (99-2-003)

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

~~(( \$3,000,000 ))~~ (1) \$5,500,000 of the state building construction account—state appropriation is provided solely for grants to local jurisdictions for jail capacity expansion projects. Grants provided in this section shall be limited to up to \$500,000 per jurisdiction.

(2) \$500,000 of the state building construction account—state appropriation increase in this section is provided solely for grants to local jurisdictions for the construction of jail beds.

Reappropriation:

General Fund—Federal . . . . . \$ 2,952,091

Appropriation:

General Fund—Federal . . . . . \$ 1,335,619

State Building Construction Account—State . . . . . \$ ((3,000,000))

3,500,000

Subtotal Appropriation . . . . . \$ ((4,335,619))

4,835,169

Prior Biennia (Expenditures) . . . . . \$ 1,193,270

Future Biennia (Projected Costs) . . . . . \$ 966,338

TOTAL . . . . . \$ ((9,447,318))

9,947,318

**NEW SECTION. Sec. 211. FOR THE STATE PARKS AND RECREATION COMMISSION**

Job Creation and Infrastructure Projects (03-1-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following building renovation and utility upgrade projects are eligible for funding:

Project	Amount
Bayview state park: Campground comfort station	\$ 400,000
Belfair phase 1 sewer replacement	\$ 200,000
Birch Bay state park: Residence replacement	\$ 175,000
Camano Island state park: Group camp comfort station replacement	\$ 250,000
Camano Island state park: Connect comfort station to utility system	\$ 734,000
Curlew Lake state park: Campground comfort station replacement	\$ 120,000
Dalles Mountain Ranch state park: Potable water well and distribution lines	\$ 125,000
Fort Columbia state park: Exterior improvements to hostel	\$ 250,000
Fort Canby state park: Upgrade north head duplex and carriage house	\$ 290,000
Fort Simcoe state park: Preservation of historic officers' quarters	\$ 233,000
Ginkgo state park: Interpretive center renovation and improvements	\$ 300,000

Iron Horse state park: FF-16 trestle replacement	\$	500,000
Iron Horse state park: South Cle Elum depot complex	\$	200,000
Kitsap Memorial state park: Campground comfort station replacement	\$	380,000
Lake Sylvia state park: Day use comfort station improvements	\$	90,000
Lewis & Clark Trail state park: Improvements to comfort stations	\$	250,000
Lime Kiln state park: Garage renovation to interpretive center	\$	100,000
Millersylvania state park: Wastewater treatment plant improvements	\$	175,000
Millersylvania state park: Comfort station 2 historic preservation	\$	110,000
Millersylvania state park: Kitchen 2 historic preservation	\$	60,000
Moran state park: Residence replacement	\$	175,000
Moran state park: South campground comfort station improvements	\$	100,000
Moran state park: Recreational vehicle trailer sewage disposal replacement	\$	150,000
Moran state park: Kitchen shelter 8 and 21 replacement	\$	112,000
Ocean Beach: Access water line purveyors	\$	50,000
Ocean City state park: North Beach area residence replacement	\$	175,000
Old Fort Townsend state park: Residence replacement	\$	175,000
Olmstead Place state park: Cabin historic preservation	\$	60,000
Olmstead Place state park: Smith house-historic preservation	\$	115,000
Paradise Point state park: Campground comfort station improvements	\$	90,000
Pearrygin Lake state park: Comfort station improvements	\$	350,000
Rainbow Falls state park: Replace pedestrian suspension bridge	\$	250,000
Sacajawea state park: Interpretive center renovation/improvements	\$	600,000
Sacajawea state park: Renovate caretaker's residence and garage	\$	170,000
Sequest state park: South loop water		

system improvements	\$	50,000
Sequim Bay state park: Fish passage barrier replacement	\$	250,000
Statewide: Campground electrification statewide (recreational vehicle hookups)	\$	1,500,000
Statewide: Culvert replacements for fish passage	\$	750,000
Statewide: Housing renovation	\$	1,348,000
Thorpe Bridge: Decking and safety railing installation	\$	300,000
Twin Harbors state park: Potable water systems improvements	\$	185,000
Twin Harbors state park: West campground comfort station replacements	\$	350,000

(2) State parks shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

State Building Construction Account—State . . . . .	\$	9,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	9,500,000

**NEW SECTION. Sec. 212. FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Job Creation and Infrastructure Projects (03-1-001)

The following projects are eligible for funding:

Project		Amount
Tokul creek: Hatchery pathogen-free water	\$	140,000
Whitehorse hatchery: Well and pond renovation	\$	300,000
Dungeness hatchery: Intakes	\$	290,000
Issaquah hatchery: Phase 3	\$	238,000
Wallace river hatchery: Pollution abatement pond	\$	175,000
Crop and orchard protection fencing	\$	200,000
Sunnyside wildlife area: Well replacement	\$	30,000
Region 5 hazardous material storage	\$	45,000
Cedar creek: Trap storage	\$	30,000
Statewide: Underground storage tank removal	\$	50,000
Chelan hatchery storage building	\$	75,000
Wenatchee: Office survey and fence	\$	25,000
Wenatchee: Warehouse renovation and storage building	\$	41,000
Wenatchee: Office and warehouse paint	\$	12,000
Region 2: Office underground sprinkler system	\$	10,000
Americans with disabilities act toilet		

installation: 12 locations	\$	200,000
Sherman creek: Irrigation line replacement	\$	149,000
Windmill ranch wildlife area: Replace pivot irrigation system	\$	121,400
Methow: Headquarters renovations	\$	43,800
Johns river wildlife area: Replace heating and windows	\$	40,200
Statewide: Elk fencing	\$	500,000
St. Helens wildlife area: Bridge replacement No. 502\$		175,000
Sunset falls bridge: Deck and safety improvements	\$	75,000
Statewide: Paving of bridge approaches	\$	75,000
Total:	\$	3,040,400

Appropriation:

State Building Construction Account—State . . . . .	\$	3,040,400
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	3,040,400

**NEW SECTION. Sec. 213. FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Culvert Replacement for Fish Passage: Job Creation and Infrastructure Projects (03-S-001)

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely to the department of fish and wildlife to replace culverts on state lands that impair fish passage. The department shall prioritize projects that affect fish species listed as threatened or endangered under the federal endangered species act.

Appropriation:

State Building Construction Account—State . . . . .	\$	500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	500,000

**NEW SECTION. Sec. 214. FOR THE DEPARTMENT OF AGRICULTURE**

Fairground Health and Safety Improvements: Job Creation and Infrastructure Projects (03-S-002)

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely to the department of agriculture to make grants to counties for health and safety improvements at fairs and youth shows as authorized by chapter 15.76 RCW.

Appropriation:

State Building Construction Account—State . . . . .	\$	100,000
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Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	100,000

**NEW SECTION. Sec. 215. FOR THE WASHINGTON STATE PATROL**  
**Job Creation and Infrastructure Projects (03-1-001)**

Appropriation:

State Building Construction Account—State . . . . .	\$	250,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	250,000

**NEW SECTION. Sec. 216. FOR THE DEPARTMENT OF TRANSPORTATION**

Columbia River Dredging (03-H-001)

The appropriation in this section is provided solely to fund the second phase of a multiphase cooperative project with the state of Oregon to dredge the Columbia river. The department shall not expend the appropriation in this section unless an agreement on ocean disposal sites has been reached that protects the state’s commercial crab fishery. The amount in this section shall lapse unless the state of Oregon appropriates a dollar-for-dollar match to fund its share of the project.

Appropriation:

State Building Construction Account—State . . . . .	\$	17,700,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	17,700,000

**NEW SECTION. Sec. 217. FOR THE WASHINGTON STATE HISTORICAL SOCIETY**

Lewis and Clark’s Station Camp—Park and Infrastructure Development: Job Creation and Infrastructure Projects (2002-S-001)

Appropriation:

State Building Construction Account—State . . . . .	\$	2,552,226
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	2,552,226

**NEW SECTION. Sec. 218. FOR THE UNIVERSITY OF WASHINGTON**

Job Creation and Infrastructure Projects (03-I-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project	Amount
Undergraduate library ceiling . . . . . \$	600,000
Oceanography/fisheries dock . . . . . \$	420,000
Storm and footing drains . . . . . \$	300,000
Eyewash stations in labs . . . . . \$	1,000,000
Roof replacements . . . . . \$	1,380,000
Bagley Hall lab renovations . . . . . \$	1,200,000
AA/BB Wings pipe replacement . . . . . \$	1,025,000
Marine studies boiler replacement . . . . . \$	75,000

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account—State . . . . . \$	3,500,000
Prior Biennia (Expenditures) . . . . . \$	0
Future Biennia (Projected Costs) . . . . . \$	0
TOTAL . . . . . \$	3,500,000

**NEW SECTION. Sec. 219. FOR WASHINGTON STATE UNIVERSITY**

**Job Creation and Infrastructure Projects (03-1-001)**

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project	Amount
Library road . . . . . \$	450,000
Stadium way . . . . . \$	475,000
Storm water/sewer . . . . . \$	360,000
Miscellaneous road improvements . . . . . \$	246,500
Lighting . . . . . \$	500,000
Upgrade water system . . . . . \$	435,000
Fire alarm retrofits . . . . . \$	103,500
Hazardous waste products . . . . . \$	1,200,000
Miscellaneous safety projects . . . . . \$	1,500,000
Spokane renovation . . . . . \$	500,000
Steam system improvements . . . . . \$	188,000

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account—State . . . . . \$	3,000,000
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Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	3,000,000

**NEW SECTION. Sec. 220. FOR EASTERN WASHINGTON UNIVERSITY**

Job Creation and Infrastructure Projects (03-1-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project		Amount
Tawanka commons renovation . . . . .	\$	3,684,453
Campus police dispatch . . . . .	\$	2,740,000
TOTAL . . . . .	\$	6,424,453

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account—State . . . . .	\$	2,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	2,500,000

**NEW SECTION. Sec. 221. FOR CENTRAL WASHINGTON UNIVERSITY**

Job Creation and Infrastructure Projects (03-1-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project		Amount
Omnibus preservation . . . . .	\$	3,500,000
Roofing . . . . .	\$	1,500,000

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account—State . . . . .	\$	2,500,000
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	2,500,000

**NEW SECTION. Sec. 222. FOR THE EVERGREEN STATE COLLEGE**

Job Creation and Infrastructure Projects (03-1-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project	Amount
Library roof repairs and safety . . . . .	\$ 2,710,000
Mechanical repairs . . . . .	\$ 750,460
Reservoir fences . . . . .	\$ 15,000

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account—State . . . . .	\$ 2,500,000
Prior Biennia (Expenditures) . . . . .	\$ 0
Future Biennia (Projected Costs) . . . . .	\$ 0
<b>TOTAL</b> . . . . .	<b>\$ 2,500,000</b>

**NEW SECTION. Sec. 223. FOR WESTERN WASHINGTON UNIVERSITY**

Job Creation and Infrastructure Projects (03-1-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

Project	Amount
Miller hall . . . . .	\$ 1,650,000
Steam plant . . . . .	\$ 1,000,000
Air quality . . . . .	\$ 743,000
Utilities . . . . .	\$ 501,000
Viking substation . . . . .	\$ 103,000
Storm water detention . . . . .	\$ 75,000
Old main restoration . . . . .	\$ 582,000
Fire safety . . . . .	\$ 435,000

(2) The university shall implement the eligible projects pursuant to sections 225 through 227 of this act and shall prioritize these projects to not exceed the amount appropriated in this section.

Appropriation:

Education Construction Account—State . . . . .	\$ 3,000,000
Prior Biennia (Expenditures) . . . . .	\$ 0
Future Biennia (Projected Costs) . . . . .	\$ 0
<b>TOTAL</b> . . . . .	<b>\$ 3,000,000</b>

**NEW SECTION. Sec. 224. FOR THE COMMUNITY AND TECHNICAL COLLEGE SYSTEM****Job Creation and Infrastructure Projects (03-1-001)**

The appropriation in this section is subject to the following conditions and limitations:

(1) The following projects are eligible for funding:

<b>College</b>	<b>Projects</b>	<b>Amount</b>
Bates Technical College	Roof and facility repairs—HVAC controls and equipment and elevator	\$ 1,160,000
Bellevue Community College	Roof repairs	\$ 2,374,000
Bellingham Technical College	Facility repairs—HVAC	\$ 986,000
Big Bend Community College	Facility repairs—Fume hoods	\$ 100,000
Clark Community College	Facility repairs—Structural	\$ 313,000
Columbia Basin College	Facility repairs—Replace heaters	\$ 225,000
Everett Community College	Roof repairs	\$ 57,000
Grays Harbor Community College	Bishop center; Roof and facility repairs—Electrical panels	\$ 745,000
Green River Community College	Campus commons—Lighting, landscape, and drainage	\$ 600,000
Highline Community College	Utility tunnels; Redondo pier; Roof repairs	\$ 3,189,000
Lake Washington Technical College	Facility repairs—Window and roof leak damage	\$ 105,000
Lower Columbia College	Roof repairs and removal of portables, including site work	\$ 290,175
Olympic Community College	Facility repairs—HVAC, ventilation, and dust accumulations	\$ 1,354,000
Peninsula Community College	Facility repairs—HVAC, domestic water, and ventilation	\$ 2,366,000
Pierce Community College - Fort Steilacoom	Facility repairs—HVAC, pipe, and electrical service upgrades	\$ 156,000
Renton Technical College	Roof repairs	\$ 526,000
Seattle Central Community College	Roof and miscellaneous repairs	\$ 435,000
Shoreline Community College	Roof repairs	\$ 452,000
South Seattle Community College	Roof and facility repairs—HVAC, fiber optic for EMS	\$ 2,301,000
Spokane Community College	Roof and facility repairs—Science building rooftop heat unit	\$ 285,000
Spokane Falls Community College	Facility repairs—HVAC, electrical service, and distribution	\$ 378,000
Tacoma Community College	Facility repairs—HVAC, electrical	\$ 2,354,000

Walla Walla Community College	Enology phase 2 and miscellaneous repairs	\$ 1,084,000
Wenatchee Valley Community College	Replace portable—prep and site work; Welding lab; Roof and facility repairs	\$ 2,565,000
Whatcom Community College	Facility repairs—HVAC and building fungus	\$ 700,000
Yakima Valley Community College	Electrical, fiber optic, and equipment installations for 2+2 classrooms	\$ 1,500,000
<b>TOTAL</b>		<b>\$ 26,600,175</b>

(2) The community and technical college system’s board shall act to ensure that colleges implement the eligible projects pursuant to sections 225 through 227 of this act.

(3) The state building construction account—state appropriation is for the following projects: Highline Community College, Peninsula Community College, and Spokane Community College. The education construction account—state appropriation is for the remaining projects under this section.

Appropriation:

Education Construction Account—State . . . . .	\$	20,760,175
State Building Construction Account—State . .	\$	5,840,000
Subtotal Appropriation . . . . .	\$	26,600,175
Prior Biennia (Expenditures) . . . . .	\$	0
Future Biennia (Projected Costs) . . . . .	\$	0
TOTAL . . . . .	\$	26,600,175

**NEW SECTION. Sec. 225.** Agencies shall expedite the expenditure of appropriations for the job creation and infrastructure program in order to: (1) Maximize additional private employment opportunities associated with capital expenditures; (2) expediently renew and repair a wide variety of state facilities and infrastructure; and (3) minimize reappropriations for work under this section to those projects that have been encumbered and are substantially underway by June 30, 2003. Agencies shall implement the job creation and infrastructure program within the agency’s current level of employees.

**NEW SECTION. Sec. 226.** The following conditions apply to appropriations for the job creation and infrastructure program: (1) Agencies shall contract permitting, design, and construction services wherever appropriate; (2) agencies shall coordinate contract and project management services to meet the completion goals of this section; (3) agencies may petition the office of financial management to use agency staff or to separately contract project management services for individual projects on an exception basis by demonstrating that this approach is more cost effective and necessary to meet the timeline goals in this section; and (4) to carry out the provisions of sections 201 through 227 of this act, the office of

financial management may assign responsibility for design, construction, and other related activities to any appropriate agency.

**NEW SECTION. Sec. 227.** To ensure that job creation and infrastructure program appropriations are carried out in accordance with legislative intent, funds shall not be allotted until eligible projects are approved by and on file with the office of financial management. Allotments for appropriations shall be provided for each eligible project in accordance with the capital project review requirements adopted by the office of financial management. No expenditure may be incurred or obligation assumed against job creation and infrastructure program appropriations until the office of financial management has approved the allotment of the funds to be expended.

The office of financial management is expected to monitor the progress of eligible projects that receive appropriations. No later than December 1, 2002, the office of financial management shall report the following information to the capital budget committee of the house of representatives and the ways and means committee of the senate: (1) A status report on each project noting percent completion; and (2) an explanation of why any appropriation remains unexpended. Agencies shall make this information available to the office of financial management upon request.

**PART 3  
MISCELLANEOUS**

**NEW SECTION. Sec. 301. FOR THE STATE TREASURER—  
TRANSFERS**

For transfers in this section to the state general fund, pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased by the amount of the transfer. The increase shall occur in fiscal year 2002.

Washington State University Building Account:

For transfer to the state general fund . . . . . \$ 3,000,000

Community and Technical College Capital

Projects Account: For transfer to the  
state general fund . . . . . \$ 14,468,800

**Sec. 302.** RCW 28B.30.730 and 1991 sp.s. c 13 s 50 are each amended to read as follows:

For the purpose of financing the cost of any projects, the board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

- (1) Shall not constitute
  - (a) An obligation, either general or special, of the state; or
  - (b) A general obligation of Washington State University or of the board;
- (2) Shall be
  - (a) Either registered or in coupon form; and

(b) Issued in denominations of not less than one hundred dollars; and  
(c) Fully negotiable instruments under the laws of this state; and  
(d) Signed on behalf of the university by the president of the board, attested by the secretary or the treasurer of the board, have the seal of the university impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such president and secretary;

(3) Shall state

(a) The date of issue; and

(b) The series of the issue and be consecutively numbered within the series;  
and

(c) That the bond is payable both principal and interest solely out of the bond retirement fund;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with RCW 28B.30.700 through 28B.30.780, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that the building fees shall be established, maintained and collected in such amounts that will provide money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement account, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;

(b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(c) A covenant that sufficient moneys may be transferred from the Washington State University building account to the bond retirement account when ordered by the board of regents in the event there is ever an insufficient amount of money in the bond retirement account to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds shall be deposited in the state treasury to the credit of the Washington State University building account and shall be used solely for paying the costs of the projects. The Washington State University building account shall be credited with the investment income derived pursuant to RCW 43.84.080 on the investible balances of scientific permanent fund and agricultural permanent fund, less the allocation to the state treasurer's service ((~~account~~ fund)) fund pursuant to RCW 43.08.190. During the 2001-2003 fiscal biennium, the legislature may transfer from the Washington State University building account to the state general fund such amounts as reflect the excess fund balance of the account.

**Sec. 303.** RCW 28B.50.360 and 2000 c 65 s 1 are each amended to read as follows:

Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be exclusively devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended exclusively to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, and for the payment of principal of and interest on any bonds issued for such purposes. During the 2001-2003 fiscal biennium, the legislature may transfer from the account to the state general fund such amounts as reflect the excess fund balance of the account.

**NEW SECTION. Sec. 304.** In order to coordinate 2003-2005 capital budget requests with the joint legislative audit and review committee's study of higher education facility preservation, each higher education baccalaureate institution and the state board for community and technical colleges shall report the following information to the joint legislative audit and review committee, the office of financial management, and the higher education coordinating board by the following dates:

(1) By May 1, 2002, a list of all facility renovation and replacement projects for which the baccalaureate institution or state board for community and technical colleges anticipates requesting over five million dollars will be requested in the first six years of the 2003-2013 ten year capital plan; and

(2) By July 1, 2002, planning, justification, and budget information for each listed project, including completed predesigns for 2003-2005 projects.

**NEW SECTION. Sec. 305.** (1) The public works board shall provide a follow-up to its 1998 infrastructure needs assessment by reevaluating existing infrastructure financing sources available for local government infrastructure needs, as currently authorized by the state.

(2) The evaluation shall include a listing, description, and the extent of utilization of all state authorized financing options. The evaluation shall also determine how these sources could be used more effectively, and recommend legislation necessary to make the sources more usable.

(3) The public works board shall work in cooperation with the legislative evaluation and accountability program, the municipal research council, and house of representatives and senate fiscal committees, as deemed appropriate. The public works board may also utilize state agencies, community officials, private business organizations, labor organizations, and other entities as appropriate in conducting the evaluation.

(4) The public works board shall report its findings to the house of representatives capital budget committee and the senate ways and means committee by December 1, 2002.

**NEW SECTION. Sec. 306.** (1) A joint select committee on capitol historic district governance is established. The joint select committee, in consultation with the state capitol committee and the department of general administration, shall conduct a study to assess, at a minimum, the feasibility of: (a) Creating a separate entity to oversee the future maintenance and preservation needs of the state legislative building, the John A. Cherberg building, the John L. O'Brien building, the Newhouse building, and the Pritchard building; (b) an organizational structure for this entity; and (c) a recommendation of funding needed for the creation and on-going operation of this entity with consideration given to the necessary and unique preservation requirements for continued maintenance of these historical buildings.



(2) The joint select committee consists of two members selected by the speaker of the house of representatives, one from each major caucus, and two members selected by the president of the senate, one from each major caucus. The committee shall be staffed by the house of representatives office of program research and senate committee services.

(3) The committee shall report its findings and recommendations to the legislature by December 1, 2002.

**NEW SECTION.** **Sec. 307.** 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. 308.** 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, 2002.

Passed the House March 14, 2002.

Approved by the Governor March 28, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2002.

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

"I am returning herewith, without my approval as to sections 104 and 126(3), Engrossed Senate Bill No. 6396 entitled:

"AN ACT Relating to the capital budget;"

**Section 104, page 4, Department of Community, Trade, and Economic Development**

This section would have modified the appropriation from a governance study, yet to be completed, of the Burke Museum into a study to expand the museum. The governance study is important because it will identify alternative funding for a museum expansion. The amended language also authorized expenditures for preservation of museum collections (an operational expense). These funds were first appropriated for the Burke Museum in the 1999-2001 biennium, at which time I vetoed provisional language for a study of future expansion of the museum. It is inappropriate to forego the governance study and to fund preservation of collections with capital funds.

**Section 126(3), page 18, Interagency Committee for Outdoor Recreation**

This section would have provided a direct appropriation to People for Salmon (PFS) from Salmon Recovery Funding Board (SRFB) grant funds. The SRFB was designed to be an independent decision maker for the allocation of salmon recovery grants. A direct appropriation by the legislature intrudes upon SRFB autonomy and decision making as to which projects best aid in fish recovery and are most desirable to fund. A similar provision was vetoed last year for the same reasons.

I add this special note regarding section 110, which I have allowed to stand. This section revises and increases funding for the Bremerton Readiness Center for the Military Department. These funds will construct additional classrooms to support an emergency services training center. While there are unique programmatic, geographic and interagency aspects of this project, proceeding with this project should in no way suggest concurrence or agreement with any future, state-financed emergency services training facilities.

For these reasons, I have vetoed sections 104 and 126(3) of Engrossed Senate Bill No. 6396.

With the exception of sections 104 and 126(3), Engrossed Senate Bill No. 6396 is approved."

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## CHAPTER 239

[Substitute Senate Bill 5400]

### COMMUNITY ECONOMIC REVITALIZATION BOARD—LOANS

AN ACT Relating to clarifying the authority of the community economic revitalization board to make loans and grants to political subdivisions and federally recognized Indian tribes for public facilities; and amending RCW 43.160.060.

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

**Sec. 1.** RCW 43.160.060 and 1999 c 164 s 103 are each amended to read as follows:

The board is authorized to make direct loans to political subdivisions of the state and to federally recognized Indian tribes for the purposes of assisting the political subdivisions and federally recognized Indian tribes in financing the cost of public facilities, including development of land and improvements for public facilities, project-specific environmental, capital facilities, land use, permitting, feasibility~~((f))~~, and marketing studies and plans; project design, site planning, and analysis; project debt and revenue impact analysis; as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision or the federally recognized Indian tribe and the finding by the board that financial circumstances require grant assistance to enable the project to move forward.

Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

(1) The board shall not provide financial assistance:

(a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.

(d) For a project the primary purpose of which is to facilitate or promote gambling.

(2) The board shall only provide financial assistance:

(a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, advanced technology, research and development, and industrial distribution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not

limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to rural counties or rural natural resources impact areas; or (v) which substantially support the trading of goods or services outside of the state's borders.

(b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.

(c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made.

(3) The board shall prioritize each proposed project according to:

(a) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located; and

(b) The rate of return of the state's investment, that includes the expected increase in state and local tax revenues associated with the project.

(4) A responsible official of the political subdivision or the federally recognized Indian tribe shall be present during board deliberations and provide information that the board requests.

Before any financial assistance application is approved, the political subdivision or the federally recognized Indian tribe seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

Passed the Senate February 14, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.

## CHAPTER 240

[Senate Bill 6818]

### GENERAL OBLIGATION BONDS

AN ACT Relating to state general obligation bonds; amending RCW 39.42.060 and 39.42.070; adding a new chapter to Title 43 RCW; and declaring an emergency.

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

**NEW SECTION.** **Sec. 1.** For the purpose of providing funds for the construction, reconstruction, planning, design, and other necessary costs of the various facilities defined in chapter . . . (Senate Bill No. 6396), Laws of 2002, the

state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eighty-nine million seven hundred thousand dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

**NEW SECTION.** **Sec. 2.** (1) The proceeds from the sale of the bonds authorized in section 1 of this act shall be deposited in the state building construction account created by RCW 43.83.020, with eighty-seven million five hundred thousand dollars to remain in the state building construction account created by RCW 43.83.020. If the state finance committee deems it necessary to issue the bonds authorized in section 1 of this act as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

(2) These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation.

**NEW SECTION.** **Sec. 3.** (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in section 1 of this act.

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in section 1 of this act.

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of section 1 of this act the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

**NEW SECTION.** **Sec. 4.** (1) Bonds issued under section 1 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

**NEW SECTION. Sec. 5.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 1 of this act, and sections 2 and 3 of this act shall not be deemed to provide an exclusive method for the payment.

**NEW SECTION. Sec. 6.** The bonds authorized in section 1 of this act shall be a legal investment for all state funds or funds under state control and for all funds of any other public body.

**Sec. 7.** RCW 39.42.060 and 2001 2nd sp.s. c 9 s 18 are each amended to read as follows:

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in (~~section 1(c) of Article VIII of the Washington state Constitution~~) RCW 39.42.070, for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;
- (7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state

treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;

(8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness;

(9) Indebtedness incurred for the purposes identified in RCW 43.99N.020;

(10) Indebtedness incurred for the purposes of the school district bond guaranty established by chapter 39.98 RCW;

(11) Indebtedness incurred for the purposes of replacing the waterproof membrane over the east plaza garage and revising related landscaping construction pursuant to RCW 43.99Q.070; and

(12) Indebtedness incurred for the purposes of the state legislative building rehabilitation, to the extent that principal and interest payments of such indebtedness are paid from the capitol building construction account pursuant to RCW 43.99Q.140(2)(b).

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee.

**Sec. 8.** RCW 39.42.070 and 1971 ex.s. c 184 s 7 are each amended to read as follows:

(1) On or after the effective date of this act, the treasurer shall compute general state revenues for the three fiscal years immediately preceding such date and shall determine the arithmetic mean thereof. As soon as is practicable after the close of each fiscal year thereafter, he or she shall do likewise. In determining the amount of general state revenues, the treasurer shall include all state money received in the treasury from each and every source whatsoever except: ~~((1))~~ (a) Fees and revenues derived from the ownership or operation of any undertaking, facility or project; ~~((2))~~ (b) moneys received as gifts, grants, donations, aid or assistance or otherwise from the United States or any department, bureau or corporation thereof, or any person, firm or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; ~~((3))~~ (c) moneys to be paid into and received from retirement system funds, and performance bonds and deposits; ~~((4))~~ (d) moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; ~~((5))~~ (e) proceeds received from the sale of bonds or other

evidences of indebtedness. Upon computing general state revenues, the treasurer shall make and file in the office of the secretary of state, a certificate containing the results of such computations. Copies of said certificate shall be sent to each elected official of the state and each member of the legislature. The treasurer shall, at the same time, advise each elected official and each member of the legislature of the current available debt capacity of the state, and may make estimated projections for one or more years concerning debt capacity.

(2) For purposes of this chapter, general state revenues shall also include revenues that are deposited in the general fund under RCW 82.45.180(2) and lottery revenues as provided in RCW 67.70.240(3).

NEW SECTION. Sec. 9. Sections 1 through 6 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

- Passed the Senate March 14, 2002.
- Passed the House March 14, 2002.
- Approved by the Governor March 28, 2002.
- Filed in Office of Secretary of State March 28, 2002.

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**CHAPTER 241**

[House Bill 2537]

**PUBLIC WORKS BOARD—PROJECTS AUTHORIZED**

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

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

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

- (1) City of Aberdeen-sanitary sewer project-upgrade wastewater treatment plant by modifying aeration basins, secondary clarifier, pumps, and associated improvements to controls and related facilities . . . . . \$ 5,651,650
- (2) City of Auburn-domestic water project-upgrade three water storage reservoirs to include recoating, disinfecting, and other associated improvements necessary . . . . . \$ 675,000
- (3) City of Bellingham-domestic water project-replace approximately four miles of water main and associated necessary improvements . . . . . \$ 1,938,000

(4) City of Bellingham-road project-rehabilitate and resurface approximately eight miles of street, related improvements including gutter, curb, and sidewalk ramp installation . . . . . \$ 2,975,000

(5) City of Black Diamond-domestic water project-construct new building at water storage reservoir to house storage tanks, equipment, and related items. Work will include trenching, vault installation, electrical work, telemetry installation, and associated improvements . . . . . \$ 180,000

(6) City of Bonney Lake-sanitary sewer project-improve the wastewater treatment plant, including replacing influent pump station, reconstructing headworks, modifying the clarifiers, converting the activated sludge basins, installing secondary clarifiers, creating a new effluent disinfection system, and other necessary improvements . . . . . \$ 7,386,500

(7) City of Burien-road project-reconstruct roadway from 1st avenue to 10th avenue. This will reduce road from four lanes to two lanes with parking and sidewalks on both sides, left turn pockets and signals, pedestrian safety design features, and other necessary related improvements . . . . . \$ 1,000,000

(8) City of Camas-road project-reconstruct approximately two miles of streets, upgrade water and sewer lines, and other related improvements and upgrades . . . . . \$ 1,018,000

(9) City of Centralia-sanitary sewer project-replace over one thousand two hundred feet of sewer pipe, backfill abandoned pipelines, resurface any disturbed roadways, and other necessary improvements . . . . . \$ 294,840

(10) City of Centralia-domestic water project-complete water system improvements, including biological assessment, land acquisition, design, install approximately eight thousand feet of pipeline, and other necessary related improvements . . . . . \$ 2,367,360

(11) Clark County-road project-upgrade NW 117th and NW 119th streets by improving travel lanes, installing turn pockets, realigning intersecting streets, adding traffic control devices, installing bike paths and sidewalks, improving storm drainage, and other necessary features . . . . . \$ 2,800,000

(12) Clark County-road project-upgrade NE 134th street by widening the right-of-way, improving traffic lanes, creating a turn lane, adding bike paths and sidewalks, improving intersections, adding transit facilities, improving drainage, and making other improvements as warranted . . . . . \$ 900,000

(13) Clark County-road project-improve approximately one and one-quarter miles of Padden Parkway, improve travel lanes, shoulders, medians, pedestrian and bike paths, street illumination, storm water detention and treatment, and other necessary related improvements . . . . . \$ 4,300,000

(14) Clark County-road project-improve approximately one mile of NE 199th street, including bringing roadway to code, adding bike and pedestrian paths, adding traffic signals, improving storm water systems, and installing or repairing other features necessary . . . . . \$ 2,000,000



(15) Clark Public Utilities District-sanitary sewer project-upgrade La Center water reclamation plant including headworks, piping, flow measurement stations, sequencing batch reactor, and other necessary improvements . . . . . \$ 1,904,926

(16) Coal Creek Utility District-domestic water project-replace approximately twelve thousand feet of water main, associated appurtenances will be upgraded or installed, and road surfaces disturbed by the replacement process will be returned to their original state . . . . . \$ 1,275,000

(17) Covington Water District-domestic water project-participate with other jurisdictions in constructing Tacoma's second water supply line. This includes, but is not limited to, upgrading the diversion dam, constructing fish bypasses, replacing water mains and pipes, constructing an eight mile transmission main, building new water treatment facilities, and rehabilitating disturbed areas throughout the project . . . . . \$ 10,000,000

(18) Town of Eatonville-domestic water project-design and construct a two hundred seventy-five thousand gallon drinking water reservoir, associated site improvements, transmission main improvements, and other related upgrades will be made as part of the project . . . . . \$ 442,000

(19) City of Edmonds-sanitary sewer project-upgrade sanitary sewer system, including rehabilitating approximately three thousand two hundred feet of trunk line, replacing a pump station, and making other associated system improvements to ensure proper performance of the system and these rehabilitating components . . . . . \$ 1,347,250

(20) City of Ephrata-domestic water project-replace approximately thirteen thousand feet of water pipe throughout the city, other ancillary items usually associated with water main replacement will also be addressed including, but not limited to, fire hydrant replacement, valve replacement, and surface restoration . . . . . \$ 1,387,200

(21) Town of Friday Harbor-sanitary sewer project-construct a new secondary wastewater treatment plant, including a new operations building with laboratory, site work, and improved solids handling capacity . . . . . \$ 3,560,000

(22) Highland Water District-domestic water project-install approximately sixteen thousand feet of water main, hydrants, valves, and related equipment as needed . . . . . \$ 1,530,000

(23) Highline Water District-domestic water project-replace approximately four thousand three hundred feet of water main, adding hydrants, valves, telemetry, and related equipment as warranted. Road surface will be restored, and construct a booster station, including a building, pump, controls, and pipes . . . . . \$ 1,297,525

(24) City of Kent-domestic water project-install approximately forty-two miles of water transmission line, improvements to the water intake facility, pipeline, storage facilities, fish bypasses, and area

restoration . . . . .	\$	10,000,000
(25) King County-sanitary sewer project-construct North Creek wastewater storage facility including odor control facility, an electrical building, piping, and controls necessary to operate the facility as designed . . . .		
	\$	10,000,000
(26) King County Water District No. 19-domestic water project-replace approximately five thousand feet of water line along Vashon Highway and Gorsuch Road and other related system upgrades . . . . .		
	\$	826,870
(27) King County Water District No. 85-domestic water project-replace approximately sixteen thousand two hundred feet of water main, pressure release valves, other valves, and other related improvements . . . .		
	\$	1,240,700
(28) Kittitas County-solid waste project-construct a transfer station and make related improvements . . . . .		
	\$	1,425,000
(29) City of Lake Stevens-sanitary sewer project-improve sewer system including the construction of a force main, upgrades to a lift station, construct new meter station, and make other necessary related		
improvements . . . . .	\$	1,692,900
(30) Lake Stevens Sewer District-sanitary sewer project-construct a lift station and replace force mains, complete a gravity bypass, several other lift stations will be upgraded, and other related		
improvements . . . . .	\$	4,083,400
(31) Lakehaven Utility District-domestic water project-construct transmission lines, improve storage facilities, create fish bypasses, and restore the project		
area . . . . .	\$	10,000,000
(32) Lakewood Water District-domestic water project-construct two water treatment plants to remove iron and manganese from ground water		
supplies . . . . .	\$	1,232,500
(33) City of Marysville-sanitary sewer project-upgrade and expand wastewater treatment plant, including design and permitting of the		
improvements . . . . .	\$	10,000,000
(34) City of Milton-road project-rehabilitate and repave sixteen streets, improve storm drainage in many of the corridors affected by the project, and make other related improvements . . . . .		
	\$	535,325
(35) City of Monroe-domestic water project-construct a one million one hundred fifty thousand gallon drinking water reservoir, build a booster pump station, make site improvements as necessary, install approximately six thousand feet of water line, create a storm water detention pond, and make other related		
improvements . . . . .	\$	3,138,314
(36) City of Moses Lake-sanitary sewer project-upgrade wastewater treatment plant including design work for wastewater treatment plant upgrades. Construct the central operations facility and improve associated		
equipment . . . . .	\$	10,000,000

- (37) City of Mountlake Terrace-domestic water project-construct a two million gallon water tank and install associated telemetry, controls, piping, and other related items . . . . . \$ 1,458,500
- (38) City of Newcastle-road project-expand Coal Creek Parkway from a two lane to a four lane roadway, install sidewalks and bike paths, median turn lane, traffic lights, and associated controls . . . . . \$ 1,000,000
- (39) City of North Bend-domestic water project-improve water filtration plant, including installation of an intertie, telemetry, controls, and other related equipment. In addition, a water line, vaults, and valves will be installed, landscape will be restored, and other site improvements will be made . . . . . \$ 1,861,500
- (40) Northshore Utility District-sanitary sewer project-install approximately one thousand two hundred feet of force main, construct lift station, install the necessary controls, and complete other site work to restore the area as needed . . . . . \$ 408,000
- (41) City of Okanogan-domestic water project-construct one million gallon reservoir, install approximately three thousand feet of transmission line, add new pumps, and install valves and related equipment to the water system . . . . . \$ 1,103,400
- (42) Olympic View Water and Sewer District-domestic water project-replace approximately four thousand feet of various sized water mains throughout the district and make other related improvements . . . . . \$ 153,000
- (43) City of Port Orchard-sanitary sewer project-upgrade treatment plant, including physical, chemical, and biological treatment processes and other associated components . . . . . \$ 10,000,000
- (44) City of Port Townsend-domestic water project-construct approximately eleven thousand feet of water main, construct a booster pump station, construct a one million five hundred thousand gallon reservoir, and make other related improvements . . . . . \$ 2,822,680
- (45) City of Renton-domestic water project-upgrade water system by constructing nearly one thousand feet of pipe, prepare and restore the affected sites, install chlorine monitoring equipment, modify system telemetry, and install related equipment . . . . . \$ 814,527
- (46) Samish Water District-sanitary sewer project-upgrade sanitary sewer system by replacing and upgrading controls, telemetry, and pumping equipment, and replacing two sewage pump stations. Other related equipment will be replaced or added as needed . . . . . \$ 865,500
- (47) Public Utility District No. 1 of Skagit County-domestic water project-upgrade water treatment plant and reservoir, and install a second high-pressure water line, approximately seventy thousand feet of water line, and other related equipment . . . . . \$ 10,000,000

(48) Snohomish County-solid waste project-design and construct a new solid waste, recycling, and transfer station, activities include but are not limited to constructing new buildings, upgrading associated roadways, and installing utilities . . . . . \$ 10,000,000

(49) Snohomish County Public Utility District No. 1-domestic water project-install approximately four thousand five hundred feet of water line, install new meters, and add related equipment. Flow restrictions will be eliminated . . . . . \$ 619,590

(50) City of Snoqualmie-sanitary sewer project-improve and floodproof a pump station, replace a force main, install submersible pumps, construct control station with associated telemetry and controls, and make other related improvements . . . . . \$ 1,185,000

(51) City of Spokane-domestic water project-replace a steel standpipe, install yard piping, along with valves, telemetry, controls, and instrumentation. In addition, demolition, site preparation, and site restoration will be done . . . . . \$ 1,187,500

(52) City of Spokane-domestic water project-replace approximately nine thousand feet of transmission line, and install valves, connections, and related equipment. Site restoration will be done . . . . . \$ 1,170,400

(53) City of Stanwood-sanitary sewer project-construct a one million five hundred thousand gallon per day facility plus its associated operations and maintenance facilities, headworks, odor treatment facilities, clarifiers, and related equipment . . . . . \$ 8,439,230

(54) City of Sumner-sanitary sewer project-replace obsolete and deteriorating equipment, add a new process to meet water quality requirements, and add facilities to increase plant capacity . . . . . \$ 4,892,800

(55) Sunland Water District-sanitary sewer project-construct a distribution system and install reuse alternatives and related improvements . . . . . \$ 380,000

(56) City of Tacoma-domestic water project-modify a reservoir and install forty-two miles of transmission line, associated systems, equipment, and controls . . . . . \$ 10,000,000

(57) City of Toledo-sanitary sewer project-replace sewer mains, sewer collection pipes, and related equipment and material . . . . \$ 712,154

(58) City of Toppenish-sanitary sewer project-replace approximately eleven thousand six hundred feet of sewer pipe, rehabilitate manholes, remove connections to storm drains, restore roadways, and add associated equipment and systems . . . . . \$ 1,336,200

(59) Val Vue Sewer District-sanitary sewer project-rehabilitate or install over fifteen thousand five hundred feet of sewer line, provide emergency power to two pump stations, complete necessary site work, and install controls . . . . . \$ 1,908,250

- (60) City of Walla Walla-sanitary sewer project-install or repair approximately fourteen thousand two hundred feet of pipe and sewer laterals, install metering manholes and sensors, install grit trap, repair clarifiers, and add new systems and other related improvements . . . . . \$ 5,159,197
- (61) Webstone Water District-domestic water project-install approximately eleven thousand feet of water transmission line, a pressure reducing station, and other equipment and controls as necessary . . . . . \$ 3,040,000
- (62) City of West Richland-sanitary sewer project-install approximately twenty-seven thousand feet of sewer pipe, decommission an existing spray field and lagoon, and complete site restoration . . . . . \$ 1,683,000
- (63) Whatcom County Water District No. 10-sanitary sewer project-construct a second interceptor system to contain existing infiltration and inflow, construct sewer lines, build pump stations, and complete miscellaneous minor modifications . . . . . \$ 2,513,700
- (64) Whatcom County Water District No. 10-domestic water project-design and construct an intertie with the water systems within the district . . . . . \$ 899,745

**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 11, 2002.  
 Passed the Senate March 7, 2002.  
 Approved by the Governor March 28, 2002.  
 Filed in Office of Secretary of State March 28, 2002.

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**CHAPTER 242**

[House Bill 2425]

**COMMUNITY ECONOMIC REVITALIZATION BOARD—FUNDING**

AN ACT Relating to the community economic revitalization board; amending RCW 43.160.060; reenacting and amending RCW 43.84.092; adding a new section to chapter 43.160 RCW; creating a new section; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a temporary funding

source until such time as a more permanent funding solution can be established. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board.

**Sec. 2.** RCW 43.84.092 and 2001 2nd sp.s. c 14 s 608, 2001 c 273 s 6, 2001 c 141 s 3, and 2001 c 80 s 5 are each reenacted and 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 oyster reserve land 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 facilities construction loan revolving account beginning July 1, 2004, 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 fruit express account, 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. 3.** A new section is added to chapter 43.160 RCW to read as follows:

(1) The public works assistance account shall annually transfer funds to the public facilities construction loan revolving account in amounts as follows: In fiscal year 2003, twelve percent of eighteen million eight hundred ninety thousand seven hundred seventy-five dollars, the total outstanding principal and interest associated with the loans issued by the public works board under the timber and rural natural resources programs; and in each of fiscal years 2004, 2005, 2006, and 2007, twenty-two percent of the principal and interest associated with the timber and rural natural resources programs. In no event may this transfer exceed four million five hundred thousand dollars per year.

(2) This section expires June 30, 2007.

**Sec. 4.** RCW 43.160.060 and 1999 c 164 s 103 are each amended to read as follows:

The board is authorized to make direct loans to political subdivisions of the state for the purposes of assisting the political subdivisions in financing the cost of public facilities, including development of land and improvements for public facilities, project-specific environmental, capital facilities, land use, permitting, feasibility(~~(f-1)~~), and marketing studies and plans; project design, site planning, and analysis; project debt and revenue impact analysis; as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision and the finding by the board that financial circumstances require grant assistance to enable the project to move forward. However, at least ten percent of all financial assistance provided by the board in any biennium shall consist of grants to political subdivisions.



Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

(1) The board shall not provide financial assistance:

(a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.

(2) The board shall only provide financial assistance:

(a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, advanced technology, research and development, and industrial distribution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to rural counties or rural natural resources impact areas; or (v) which substantially support the trading of goods or services outside of the state's borders.

(b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.

(c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made.

(3) The board shall prioritize each proposed project according to:

(a) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located; and

(b) The rate of return of the state's investment, that includes the expected increase in state and local tax revenues associated with the project.

(4) A responsible official of the political subdivision shall be present during board deliberations and provide information that the board requests.

Before any financial assistance application is approved, the political subdivision seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

Passed the House March 13, 2002.  
Passed the Senate March 13, 2002.  
Approved by the Governor March 28, 2002.  
Filed in Office of Secretary of State March 28, 2002.

**CHAPTER 243**

[Substitute Senate Bill 6426]

**EMPLOYER-GRANTED LEAVE—CARE FOR FAMILY MEMBERS**

AN ACT Relating to use of employer-granted leave to care for family members with serious medical conditions; amending RCW 49.12.270; adding new sections to chapter 49.12 RCW; and providing an effective date.

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

**Sec. 1.** RCW 49.12.270 and 1988 c 236 s 3 are each amended to read as follows:

(1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer shall allow an employee to use any or all of the employee's ((accrued)) choice of sick leave or other paid time off to care for: (a) A child of the employee ((under the age of eighteen)) with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. An employee may not take advance leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.

(2) Use of leave other than ((accrued)) sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable.

**NEW SECTION. Sec. 2.** A new section is added to chapter 49.12 RCW to read as follows:

The definitions in this section apply throughout RCW 49.12.270 through 49.12.295 unless the context clearly requires otherwise.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Grandparent" means a parent of a parent of an employee.

(3) "Parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(4) "Parent-in-law" means a parent of the spouse of an employee.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, and personal holiday.

(6) "Spouse" means a husband or wife, as the case may be.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 49.12 RCW to read as follows:

An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee: (1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or (2) has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295.

**NEW SECTION.** **Sec. 4.** This act takes effect January 1, 2003.

Passed the Senate March 12, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 244

[Substitute Senate Bill 6635]

### DANGEROUS DOGS—NOTICES—APPEALS

AN ACT Relating to a notice and appeal process for animal control authorities; amending RCW 16.08.070, 16.08.080, and 16.08.100; and prescribing penalties.

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

**Sec. 1.** RCW 16.08.070 and 1987 c 94 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.

(1) "Potentially dangerous dog" means any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that (~~(according to the records of the appropriate authority,)~~) (a) (~~(has inflicted)~~) inflicts severe injury on a human being without provocation on public or private property, (b) (~~(has killed)~~) kills a domestic animal without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans (~~(or domestic animals)~~).

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.

**Sec. 2.** RCW 16.08.080 and 1989 c 26 s 3 are each amended to read as follows:

(1) Any city or county that has a notification and appeal procedure with regard to determining a dog within its jurisdiction to be dangerous may continue to utilize or amend its procedure. A city or county animal control authority that does not have a notification and appeal procedure in place as of the effective date of this act, and seeks to declare a dog within its jurisdiction, as defined in subsection (7) of this section, to be dangerous must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested.

(2) The notice must state: The statutory basis for the proposed action; the reasons the authority considers the animal dangerous; a statement that the dog is subject to registration and controls required by this chapter, including a recitation of the controls in subsection (6) of this section; and an explanation of the owner's rights and of the proper procedure for appealing a decision finding the dog dangerous.

(3) Prior to the authority issuing its final determination, the authority shall notify the owner in writing that he or she is entitled to an opportunity to meet with the authority, at which meeting the owner may give, orally or in writing, any reasons or information as to why the dog should not be declared dangerous. The notice shall state the date, time, and location of the meeting, which must occur prior to expiration of fifteen calendar days following delivery of the notice. The owner may propose an alternative meeting date and time, but such meeting must

occur within the fifteen-day time period set forth in this section. After such meeting, the authority must issue its final determination, in the form of a written order, within fifteen calendar days. In the event the authority declares a dog to be dangerous, the order shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the signature of the person who made the determination. The order shall be sent by regular and certified mail, return receipt requested, or delivered in person to the owner at the owner's last address known to the authority.

(4) If the local jurisdiction has provided for an administrative appeal of the final determination, the owner must follow the appeal procedure set forth by that jurisdiction. If the local jurisdiction has not provided for an administrative appeal, the owner may appeal a municipal authority's final determination that the dog is dangerous to the municipal court, and may appeal a county animal control authority's or county sheriff's final determination that the dog is dangerous to the district court. The owner must make such appeal within twenty days of receiving the final determination. While the appeal is pending, the authority may order that the dog be confined or controlled in compliance with RCW 16.08.090. If the dog is determined to be dangerous, the owner must pay all costs of confinement and control.

(5) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section and RCW 16.08.090 and 16.08.100 shall not apply to police dogs as defined in RCW 4.24.410.

~~((2))~~ (6) Unless a city or county has a more restrictive code requirement, the animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least two hundred fifty thousand dollars, payable to any person injured by the ~~((vicious))~~ dangerous dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least two hundred fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

~~((3))~~ (7)(a)(i) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

~~((b))~~ (ii) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

~~((c))~~ (iii) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

~~((4))~~ (b) This subsection does not apply if a city or county does not allow dangerous dogs within its jurisdiction.

(8) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs.

(9) Nothing in this section limits a local authority in placing additional restrictions upon owners of dangerous dogs. This section does not require a local authority to allow a dangerous dog within its jurisdiction.

**Sec. 3.** RCW 16.08.100 and 1987 c 94 s 4 are each amended to read as follows:

(1) Any dangerous dog shall be immediately confiscated by an animal control authority if the: (a) Dog is not validly registered under RCW 16.08.080; (b) owner does not secure the liability insurance coverage required under RCW 16.08.080; (c) dog is not maintained in the proper enclosure; or (d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. The owner must pay the costs of confinement and control. The animal control authority must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested, specifying the reason for the confiscation of the dangerous dog, that the owner is responsible for payment of the costs of confinement and control, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within twenty days. The animal control authority shall destroy the confiscated dangerous dog in an expeditious and humane manner if any deficiencies required by this subsection are not corrected within twenty days of notification. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

(2) If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that he or she was in compliance with the requirements for ownership of a dangerous dog pursuant to this chapter and the person or domestic animal attacked or bitten by the defendant's dog trespassed on the defendant's real or personal property or provoked the defendant's dog without justification or excuse. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether or not the dog has previously been declared potentially dangerous or dangerous, shall, upon conviction, be guilty of a class C felony punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the human severely injured or killed by the defendant's dog: (a) Trespassed on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of young children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog; or (b) provoked the defendant's dog without justification or excuse on the defendant's real or personal property which was enclosed by fencing suitable to prevent the entry of young children and designed to prevent the dog from escaping and marked with clearly visible signs warning people, including children, not to trespass and to beware of dog. In such a prosecution, the state has the burden of showing that the owner of the dog either knew or should have known that the dog was potentially dangerous as defined in this chapter. The state may not meet its burden of proof that the owner should have known the dog was potentially dangerous solely by showing the dog to be a particular breed or breeds. In addition, the dog shall be immediately confiscated by an animal control authority, ~~((placed in quarantine for the proper length of time))~~ quarantined, and ~~((thereafter))~~ upon conviction of the owner destroyed in an expeditious and humane manner.

(4) Any person entering a dog in a dog fight is guilty of a class C felony punishable in accordance with RCW 9A.20.021.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

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## CHAPTER 245

[Senate Bill 6530]

### SALVAGE VEHICLES

AN ACT Relating to salvage vehicles; and amending RCW 46.12.005 and 46.12.070.

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

**Sec. 1.** RCW 46.12.005 and 1996 c 26 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) The words "delivery," "notice," "send," and "security interest" have the same meaning as these terms are defined in RCW 62A.1-201; the word "secured party" has the same meaning as this term is defined in RCW ~~((62A.9-105))~~ 62A.9A-102.

(2) "Salvage vehicle" means a vehicle whose certificate of ownership has been surrendered to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss or for which there is documentation indicating that the vehicle has been declared salvage or has been damaged to the extent that the owner, an insurer, or other person acting on behalf of the owner, has determined that the cost of parts and labor plus the salvage value has made it uneconomical to repair the vehicle. The term does not include a motor vehicle having a model year designation of a calendar year that is at least six years before the calendar year in which the vehicle was wrecked, destroyed, or damaged, unless, after the effective date of this act and immediately before the vehicle was wrecked, destroyed, or damaged, the vehicle had a retail fair market value of at least the then market value threshold amount and has a model year designation of a calendar year not more than twenty years before the calendar year in which the vehicle was wrecked, destroyed, or damaged. "Market value threshold amount" means six thousand five hundred dollars or such greater amount as is then in effect by rule of the department in accordance with this section. If, for any year beginning with 2002, the Consumer Price Index for All Urban Consumers, compiled by the Bureau of Labor Statistics, United States Department of Labor, or its successor, for the West Region, in the expenditure category "used cars and trucks," shows an increase in the annual average for that year compared to that of the year immediately prior, the department shall, by rule, increase the then market value threshold amount by the same percentage as the percentage increase of the annual average, with the increase of the market value threshold amount to be effective on July 1st of the year immediately after the year with the increase of the annual average. However, the market value threshold amount ma not be increased if the amount of the increase would be less than fift dollars and each increase of the market value threshold amount will be rounded to the nearest ten dollars. If an increase in the market value threshold amount is not made because the increase would be less than fift dollars the unmade increase will be carried forward and added to later ear calculations of increase until the unmade increase is included in an increase made to the market value threshold amount.

**Sec. 2.** RCW 46.12.070 and 1990 c 250 s 28 are each amended to read as follows:

Upon the destruction of any vehicle issued a certificate of ownership under this chapter or a license registration under chapter 46.16 RCW, the registered owner and the legal owner shall forthwith and within fifteen days thereafter forward and surrender the certificate to the department, together with a statement of the reason for the surrender and the date and place of destruction. Failure to notify the department or the possession by any person of any such certificate for a vehicle so destroyed, after fifteen days following its destruction, is prima facie evidence of violation of the provisions of this chapter and constitutes a gross misdemeanor.



Any insurance company settling an insurance claim on a vehicle that has been issued a certificate of ownership under this chapter or a certificate of license registration under chapter 46.16 RCW as a total loss, less salvage value, shall notify the department thereof within fifteen days after the settlement of the claim. Notification shall be provided regardless of where or in what jurisdiction the total loss occurred.

For a motor vehicle having a model year designation at least six years before the calendar year of destruction, the notification to the department must include a statement of whether the retail fair market value of the motor vehicle immediately before the destruction was at least the then market value threshold amount as defined in RCW 46.12.005.

Passed the Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 246

[House Bill 2286]

### STOLEN VEHICLES—CERTIFICATES OF OWNERSHIP

AN ACT Relating to certificates of ownership for stolen vehicles; and amending RCW 46.12.047.

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

**Sec. 1.** RCW 46.12.047 and 2001 c 125 s 3 are each amended 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))~~ issued a certificate of ownership for the vehicle. Vehicles for which the stolen vehicle check is negative shall be ~~((registered))~~ issued a certificate of ownership if the department is satisfied that all other requirements have been met.

Passed the House February 12, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 247

[Engrossed Senate Bill 6316]

### ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

AN ACT Relating to electric personal assistive mobility devices; amending RCW 46.04.320, 46.04.330, 46.04.332, 46.04.670, 46.20.500, 46.61.710, and 35.75.020; adding a new section to chapter 46.04 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 46.04 RCW to read as follows:

"Electric personal assistive mobility device" (EPAMD) means a self-balancing device with two wheels not in tandem, designed to transport only one person by an electric propulsion system with an average power of seven hundred fifty watts (one horsepower) having a maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator weighing one hundred seventy pounds, of less than twenty miles per hour.

**Sec. 2.** RCW 46.04.320 and 1961 c 12 s 46.04.320 are each amended to read as follows:

"Motor vehicle" shall mean every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. An electric personal assistive mobility device is not considered a motor vehicle.

**Sec. 3.** RCW 46.04.330 and 1990 c 250 s 20 are each amended to read as follows:

"Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, an electric personal assistive mobility device, and a moped.

The Washington state patrol may approve of and define as a "motorcycle" a motor vehicle that fails to meet these specific criteria, but that is essentially similar in performance and application to motor vehicles that do meet these specific criteria.

**Sec. 4.** RCW 46.04.332 and 1979 ex.s. c 213 s 3 are each amended to read as follows:

"Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor (~~which~~) that produces not to exceed five brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft). A motor-driven cycle does not include a moped or an electric personal assistive mobility device.

**Sec. 5.** RCW 46.04.670 and 1994 c 262 s 2 are each amended to read as follows:

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall not be considered

vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16, 46.29, 46.37, or 46.70 RCW.

**Sec. 6.** RCW 46.20.500 and 1999 c 274 s 8 are each amended to read as follows:

(1) No person may drive a motorcycle or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device.

**Sec. 7.** RCW 46.61.710 and 1997 c 328 s 5 are each amended to read as follows:

(1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with the provisions of RCW 46.16.630.

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped, electric personal assistive mobility device, or an electric-assisted bicycle on a fully controlled limited access highway (~~or on a sidewalk~~) is unlawful. Operation of a moped or an electric-assisted bicycle on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful.

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles may have access to highways of the state to the same extent as bicycles. Electric-assisted bicycles may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles.

(6) A person operating an electric personal assistive mobility device (EPAMD) shall obey all speed limits and shall yield the right-of-way to pedestrians and human-powered devices at all times. An operator must also give an audible signal before overtaking and passing a pedestrian. Except for the limitations of this subsection, persons operating an EPAMD have all the rights and duties of a pedestrian.

(7) The use of an EPAMD may be regulated in the following circumstances:

(a) A municipality and the department of transportation may prohibit the operation of an EPAMD on public highways within their respective jurisdictions where the speed limit is greater than twenty-five miles per hour;

(b) A municipality may restrict the speed of an EPAMD in locations with congested pedestrian or nonmotorized traffic and where there is significant speed differential between pedestrians or nonmotorized traffic and EPAMD operators. The areas in this subsection must be designated by the city engineer or designee of the municipality. Municipalities shall not restrict the speed of an EPAMD in the entire community or in areas in which there is infrequent pedestrian traffic;

(c) A state agency or local government may regulate the operation of an EPAMD within the boundaries of any area used for recreation, open space, habitat, trails, or conservation purposes.

**Sec. 8.** RCW 35.75.020 and 1965 c 7 s 35.75.020 are each amended to read as follows:

It shall be unlawful for any person to lead, drive, ride, or propel any team, wagon, animal, or vehicle other than a bicycle, electric personal assistive mobility device, or similar vehicle upon and along any bicycle path constructed within or without the corporate limits of any city or town excepting at suitable crossings to be provided in the construction of such paths. Any person violating the provisions of this section shall be guilty of a misdemeanor.

**NEW SECTION. Sec. 9.** The legislature shall review the provisions of this act and make any necessary changes by July 1, 2005.

Passed the Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

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**CHAPTER 248**

[Engrossed Substitute Senate Bill 6464]

**CITY TRANSPORTATION AUTHORITY—MONORAIL TRANSPORTATION**

AN ACT Relating to city transportation authority; amending RCW 84.52.010 and 84.52.052; adding a new chapter to Title 36 RCW; and creating a new section.

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) "Authority" means a city transportation authority created pursuant to this act.

(2) "Authority area" means the territory within a city as designated in the ordinance creating the authority.

(3) "Bonds" means bonds, notes, or other evidences of indebtedness.

(4) "Public monorail transportation function" means the transportation of passengers and their incidental baggage by means of public monorail transportation facilities as authorized in this chapter.

(5) "Public monorail transportation facilities" means a transportation system that utilizes train cars running on a guideway, together with the necessary passenger stations, terminals, parking facilities, related facilities or other properties, and facilities necessary and appropriate for passenger and vehicular access to and from people-moving systems, not including fixed guideway light rail systems.

(6) "Qualified elector" means any person registered to vote within the city boundaries.

**NEW SECTION. Sec. 2.** (1) A city transportation authority to perform a public monorail transportation function may be created in every city with a population greater than three hundred thousand to perform a public monorail transportation function. The authority shall embrace all the territory in the authority area. A city transportation authority is a municipal corporation, an independent taxing "authority" within the meaning of Article 7, section 1 of the state Constitution, and a "taxing district" within the meaning of Article 7, section 2 of the state Constitution.

(2) Any city transportation authority and proposed taxes established pursuant to this chapter, either by ordinance or petition as provided in this chapter, must be approved by a majority vote of the electors residing within the proposed authority area voting at a regular or special election.

**NEW SECTION. Sec. 3.** (1) A city that undertakes to propose creation of an authority must propose the authority by ordinance of the city legislative body. The ordinance must:

(a) Propose the authority area and the size and method of selection of the governing body of the authority, which governing body may be appointed or elected, provided that officers or employees of any single city government body may not compose a majority of the members of the authority's governing body;

(b) Propose whether all or a specified portion of the public monorail transportation function will be exercised by the authority;

(c) Propose an initial array of taxes to be voted upon by the electors within the proposed authority area; and

(d) Provide for an interim governing body of the authority which will govern the authority upon voter approval of formation of the authority, until a permanent governing body is selected, but in no event longer than fourteen months.

(2) An authority may also be proposed to be created by a petition setting forth the matters described in subsection (1) of this section, and signed by one percent of the qualified electors of the proposed authority area.

(3) Upon approval by the qualified electors of the formation of the city transportation authority and any proposed taxes, either by ordinance or by petition as provided in this chapter, the governing body of an authority, or interim governing body, as applicable, will adopt bylaws determining, among other things,

the authority's officers and the method of their selection, and other matters the governing body deems appropriate.

NEW SECTION. **Sec. 4.** The authority is subject to all standard requirements of a governmental entity pursuant to RCW 35.21.759.

NEW SECTION. **Sec. 5.** Every authority has the following powers:

(1) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of public monorail transportation facilities, including passenger terminal and parking facilities and properties, and other facilities and properties as may be necessary for passenger and vehicular access to and from public monorail transportation facilities, together with all lands, rights of way, and property within or outside the authority area, and together with equipment and accessories necessary or appropriate for these facilities, except that property, including but not limited to other types of public transportation facilities, that is owned by any city, county, county transportation authority, public transportation benefit area, metropolitan municipal corporation, or regional transit authority may be acquired or used by an authority only with the consent of the public entity owning the property. The entities are authorized to convey or lease property to an authority or to contract for their joint use on terms fixed by agreement between the entity and the authority;

(2) To fix rates, tolls, fares, and charges for the use of facilities and to establish various routes and classes of service. Rates, tolls, fares, or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens and handicapped persons;

(3) To contract with the United States or any of its agencies, any state or any of its agencies, any metropolitan municipal corporation, and other country, city, other political subdivision or governmental instrumentality, or governmental agency, or any private person, firm, or corporation for the purpose of receiving any gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction, operation, or maintenance of public monorail transportation facilities as follows:

(a) Notwithstanding the provisions of any law to the contrary, and in addition to any other authority provided by law, the governing body of a city transportation authority may contract with one or more vendors for the design, construction, operation, or maintenance, or other service related to the development of a monorail public transportation system including, but not limited to, monorail trains, operating systems and control equipment, guideways, and pylons, together with the necessary passenger stations, terminals, parking facilities, and other related facilities necessary and appropriate for passenger and vehicular access to and from the monorail train.

(b) If the governing body of the city transportation authority decides to proceed with the consideration of qualifications or proposals for services from qualified vendors, the authority must publish notice of its requirements and request

submission of qualifications statements or proposals. The notice must be published in the official newspaper of the city creating the authority at least once a week for two weeks, not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice must state in summary form: (i) The general scope and nature of the design, construction, operation, maintenance, or other services being sought related to the development of the proposed monorail, tram, or trolley public transportation system; (ii) the name and address of a representative of the city transportation authority who can provide further details; (iii) the final date for the submission of qualifications statements or proposals; (iv) an estimated schedule for the consideration of qualifications statements or proposals, the selection of vendors, and the negotiation of a contract or contracts for services; (v) the location of which a copy of any requests for qualifications statements or requests for proposals will be made available; and (vi) the criteria established by the governing body of the authority to select a vendor or vendors, which may include, but is not limited to, the vendor's prior experience, including design, construction, operation, or maintenance of other similar public transportation facilities, respondent's management capabilities, proposed project schedule, availability and financial resources, costs of the services to be provided, nature of facility design proposed by the vendors, system reliability, performance standards required for the facilities, compatibility with existing public transportation facilities operated by the authority or any other public body or other providers of similar services to the public, project performance guarantees, penalties, and other enforcement provisions, environmental protection measures to be used by the vendor, consistency with the applicable regional transportation plans, and the proposed allocation of project risks.

(c) If the governing body of the city transportation authority decides to proceed with the consideration of qualifications statements or proposals submitted by vendors, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The governing body or its representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or may request detailed proposals without having first received and evaluated qualifications statements. The governing body or its representative will evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the governing body of the authority, discussions and interviews must be held with at least two vendors. Any revisions to a request for qualifications or request for proposals must be made available to all vendors then under consideration by the governing body of the authority and must be made available to any other person who has requested receipt of that information.

(d) Based on the criteria established by the governing body of the authority, the representative will recommend to the governing body a vendor or vendors that

are initially determined to be the best qualified to provide one or more of the design, construction, operation or maintenance, or other service related to the development of the proposed monorail public transportation system.

(e) The governing body of the authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, operation or maintenance, or other service related to the development of the proposed monorail public transportation system on terms that the governing body of the authority determines to be fair and reasonable and in the best interest of the authority. If the governing body, or its representative, is unable to negotiate a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the authority, negotiations with any one or more of the vendors must be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the governing body decides to continue the process of selection, negotiations will continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the governing body of the authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the governing body. The process may be repeated until an agreement is reached.

(f) Prior to entering into a contract with a vendor, the governing body of the authority must make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the governing body of the authority to use this method for awarding contracts for one or more of the design, construction, or operation or maintenance of the proposed monorail public transportation system as compared to all other methods of awarding such contracts.

(g) Each contract must include a project performance bond or bonds or other security by the vendor.

(h) The provisions of chapters 39.12 and 39.19 RCW apply to a contract entered into under this section as if the public transportation systems and facilities were owned by a public body.

(i) The vendor selection process permitted by this section is supplemental to and is not construed as a repeal of or limitation on any other authority granted by law.

(j) Contracts for the construction of facilities, other than contracts for facilities to be provided by the selected vendor, with an estimated cost greater than two hundred thousand dollars must be awarded after a competitive bid process consistent with chapter 39.04 RCW or awarded through an alternative public works contracting procedure consistent with chapter 39.10 RCW;

(4) To contract with the United States or any of its agencies, any state or any of its agencies, any metropolitan municipal corporation, any other county, city, other political subdivision or governmental instrumentality, any governmental agency, or any private person, firm, or corporation for the use by either contracting



party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands, and rights of way of all kinds which are owned, leased, or held by the other party and for the purpose of planning, designing, constructing, operating any public transportation facility, or performing any service related to transportation which the authority is authorized to operate or perform, on terms as may be agreed upon by the contracting parties;

(5) To acquire any existing public transportation facility by conveyance, sale, or lease. In any acquisition from a county, city, or other political subdivision of the state, the authority will receive credit from the county or city or other political subdivision for any federal assistance and state matching assistance used by the county or city or other political subdivision in acquiring any portion of the public transportation facility. Upon acquisition, the authority must assume and observe all existing labor contracts relating to the public transportation facility and, to the extent necessary for operation of the public transportation facility, all of the employees of the public transportation facility whose duties are necessary to efficiently operate the public transportation facility must be appointed to comparable positions to those which they held at the time of the transfer, and no employee or retired or pensioned employee of the public transportation facility will be placed in any worse position with respect to pension seniority, wages, sick leave, vacation, or other benefits than he or she enjoyed as an employee of the public transportation facility prior to the acquisition. Furthermore, the authority must engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired facility and may enter into labor contracts with the employee labor organization;

(6) To contract for, participate in, and support research, demonstration, testing, and development of public monorail transportation facilities, equipment, and use incentives, and have all powers necessary to comply with any criteria, standards, and regulations which may be adopted under state and federal law, and to take all actions necessary to meet the requirements of those laws. The authority has, in addition to these powers, the authority to prepare, adopt, and carry out a comprehensive public monorail plan and to make other plans and studies and to perform programs as the authority deems necessary to implement and comply with those laws;

(7) To establish local improvement districts within the authority area to finance public monorail transportation facilities, to levy special assessments on property specially benefited by those facilities, and to issue local improvement bonds to be repaid by the collection of local improvement assessments. The method of establishment, levying, collection, enforcement, and all other matters relating to the local improvement districts, assessments, collection, and bonds are as provided in the statutes governing local improvement districts of cities and towns. The duties devolving upon the city treasurer in those statutes are imposed on the treasurer of the authority;

(8) To exercise all other powers necessary and appropriate to carry out its responsibilities, including without limitation the power to sue and be sued, to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the authority, to enter into contracts, and to employ the persons as the authority deems appropriate. An authority may also sell, lease, convey, or otherwise dispose of any real or personal property no longer necessary for the conduct of the affairs of the authority.

**NEW SECTION.** Sec. 6. Each authority will establish necessary and appropriate funds and accounts consistent with the uniform system of accounts developed pursuant to RCW 43.09.210. The authority may designate a treasurer or may contract with any city with territory within the authority area for treasury and other financial functions. The city must be reimbursed for the expenses of treasury services. However, no city whose treasurer serves as treasurer of an authority is liable for the obligations of the authority.

***\*NEW SECTION. Sec. 7. The authority must adopt a public transportation plan for public transportation facilities to be provided by the authority and the facilities must be provided substantially in accordance with that plan. The plan, and any adopted plan amendments, will be submitted for approval to the legislative authority of the city. Prior to adoption of the plan, the authority will provide a minimum of sixty days during which sufficient public hearings will be held to provide interested persons an opportunity to participate in development of the plan. The plan or any amendment is not effective until approval is granted or until ninety days has elapsed since the plan or amendment has been submitted for approval and the city has neither approved nor disapproved the plan or amendment within those ninety days. The plan as approved by the legislative authority, or after the passage of ninety days, when the vote has neither been approved nor disapproved, shall be put before the qualified electors of the authority area.***

**\*Sec. 7 was vetoed. See message at end of chapter.**

**NEW SECTION.** Sec. 8. Every authority has the power to:

(1) Levy excess levies upon the property included within the authority area, in the manner prescribed by Article VII, section 2 of the state Constitution and by RCW 84.52.052 for operating funds, capital outlay funds, and cumulative reserve funds;

(2) Issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter-approved general obligation indebtedness equal to one and one-half percent of the value of the taxable property within the authority area, as the term "value of the taxable property" is defined in RCW 39.36.015. An authority may additionally issue general obligation bonds, together with outstanding voter-approved and nonvoter-approved general obligation indebtedness, equal to two and one-half percent of the value of the taxable property within the authority area, as the term "value of the taxable property" is defined in RCW 39.36.015, when the bonds are approved by three-fifths of the qualified electors of

the authority at a general or special election called for that purpose and may provide for the retirement thereof by levies in excess of dollar rate limitations in accordance with the provisions of RCW 84.52.056. These elections will be held as provided in RCW 39.36.050;

(3) Issue revenue bonds payable from any revenues other than taxes levied by the authority, and to pledge those revenues for the repayment of the bonds. Proceeds of revenue bonds may only be expended for the costs of public monorail transportation facilities, for financing costs, and for capitalized interest during construction plus six months thereafter. The bonds and warrants will be issued and sold in accordance with chapter 39.46 RCW.

No bonds issued by an authority are obligations of any city, county, or the state of Washington or any political subdivision thereof other than the authority, and the bonds will so state, unless the legislative authority of any city or county or the legislature expressly authorizes particular bonds to be either guaranteed by or obligations of its respective city or county or of the state.

**NEW SECTION. Sec. 9.** (1) Every authority has the power to levy and collect a special excise tax not exceeding two and one-half percent on the value of every motor vehicle owned by a resident of the authority area for the privilege of using a motor vehicle. Before utilization of any excise tax money collected under this section for acquisition of right of way or construction of a public monorail transportation facility on a separate right of way, the authority must adopt rules affording the public an opportunity for corridor public hearings and design public hearings, which provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic, or environmental effect upon the locality upon which they are to be constructed; or (b) on the public transportation facilities operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the authority must adhere to the provisions of the administrative procedure act.

(2) A "corridor public hearing" is a public hearing that: (a) Is held before the authority is committed to a specific route proposal for the public transportation facility, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the public transportation facility; and (c) provides a public forum that affords a full opportunity for presenting views on the public transportation facility route location, and the social, economic, and environmental effects on that location and alternate locations. However, the hearing is not deemed to be necessary before adoption of a transportation plan as provided in section 7 of this act or a vote of the qualified electors under subsection (5) of this section.

(3) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; (b) is held to afford an opportunity for participation by those interested in the determination of major

design features of the public monorail transportation facility; and (c) provides a public forum to afford a full opportunity for presenting views on the public transportation system design, and the social, economic, and environmental effects of that design and alternate designs, including people-mover technology.

(4) An authority imposing a tax under subsection (1) of this section may also impose a sales and use tax, in addition to any tax authorized by RCW 82.14.030, upon retail car rentals within the city that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax must not exceed 1.944 percent of the base of the tax. The base of the tax will be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The revenue collected under this subsection will be distributed in the same manner as sales and use taxes under chapter 82.14 RCW.

(5) Before any authority may impose any of the taxes authorized under this section, the authorization for imposition of the taxes must be approved by the qualified electors of the authority area.

**NEW SECTION. Sec. 10.** (1) Every authority has the power to fix and impose a fee, not to exceed one hundred dollars per vehicle, for each vehicle that is subject to relicensing tab fees under RCW 46.16.0621 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 authority area. The department of licensing must provide an exemption from the fee for any vehicle the owner of which demonstrates is not operated within the authority area.

(2) The department of licensing will administer and collect the fee. The department will 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 will be remitted to the custody of the state treasurer for monthly distribution to the authority.

(3) The authority imposing this fee will delay the effective date at least six months from the date the fee is approved by the qualified voters of the authority area to allow the department of licensing to implement administration and collection of the fee.

(4) Before any authority may impose any of the fees authorized under this section, the authorization for imposition of the fees must be approved by a majority of the qualified electors of the authority area voting.

**NEW SECTION. Sec. 11.** (1) Every authority has the power to impose annual regular property tax levies in an amount equal to one dollar and fifty cents or less per thousand dollars of assessed value of property in the authority area when specifically authorized to do so by a majority of the voters voting on a proposition submitted at a special election or at the regular election of the authority. A proposition authorizing the tax levies will not be submitted by an authority more than twice in any twelve-month period. Ballot propositions must conform with RCW 29.30.111. The number of years during which the regular levy

will be imposed may be limited as specified in the ballot proposition or may be unlimited in duration. In the event an authority is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the limitations provided in RCW 84.52.043 and 84.52.050, exceed these limitations, the authority's property tax levy shall be reduced or eliminated consistent with RCW 84.52.010.

(2) The limitation in RCW 84.55.010 does not apply to the first levy imposed under this section following the approval of the levies by the voters under subsection (1) of this section.

**NEW SECTION. Sec. 12.** All taxes and fees levied and collected by an authority must be used solely for the purpose of paying all or any part of the cost of acquiring, designing, constructing, equipping, maintaining, or operating public monorail transportation facilities or contracting for the services thereof, or to pay or secure the payment of all or part of the principal of or interest on any general obligation bonds or revenue bonds issued for authority purposes. Until expended, money accumulated in the funds and accounts of an authority may be invested in the manner authorized by the governing body of the authority, consistent with state law.

If any of the revenue from any tax or fee authorized to be levied by an authority has been pledged by the authority to secure the payment of any bonds as herein authorized, then as long as that pledge is in effect the legislature will not withdraw from the authority the authorization to levy and collect the tax or fee.

**NEW SECTION. Sec. 13.** The city transportation authority may be dissolved by a vote of the people residing within the boundaries of the authority if the authority is faced with significant financial problems. Any referendum petition to dissolve the city transportation authority must be filed with the city council and contain provisions for dissolution of the authority. Within seven days, the city prosecutor must review the validity of the petition and submit its report to the petitioner and city council. If the petitioner's claims are deemed valid by the city prosecutor, within ten days of the petitioner's filing, the city council will confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title must be posed as a question and an affirmative vote on the measure results in authority retention and a negative vote on the measure results in the authority's dissolution. The petitioner will be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has ninety days in which to secure on petition forms, the signatures of not less than fifteen percent of the registered voters in the authority area and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer will verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the initiative to the authority area voters at a general or special election

held on one of the dates provided in RCW 29.13.010 as determined by the city council, which election will not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

**NEW SECTION. Sec. 14.** The special excise tax imposed under section 9(1) of this act will be collected at the same time and in the same manner as relicensing tab fees under RCW 46.16.0621 and section 10 of this act. Every year on January 1st, April 1st, July 1st, and October 1st the department of licensing shall remit special excise taxes collected on behalf of an authority, back to the authority, at no cost to the authority. Valuation of motor vehicles for purposes of the special excise tax imposed under section 9(1) of this act must be consistent with chapter 82.44 RCW.

**Sec. 15.** RCW 84.52.010 and 1995 2nd sp.s. c 13 s 4 are each amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any

portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, section 11 of this act, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012.

**Sec. 16.** RCW 84.52.052 and 1996 c 230 s 1615 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district

except school districts in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, water-sewer district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, rural partial-county library district, intercounty rural library district, fire protection district, cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, ~~((or))~~ cultural arts, stadium, and convention district, or city transportation authority.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

**NEW SECTION. Sec. 17.** Sections 1 through 14 of this act constitute a new chapter in Title 36 RCW.

**\*NEW SECTION. Sec. 18.** *This act is null and void if a regional transportation act does not become law by December 31, 2002.*

\*Sec. 18 was vetoed. See message at end of chapter.

Passed the Senate February 18, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 29, 2002.

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

"I am returning herewith, without my approval as to sections 7 and 18, Engrossed Substitute Senate Bill No. 6464 entitled:

"AN ACT Relating to city transportation authority;"

This bill will allow the voters of Seattle to decide if they want to impose taxes to pay for a monorail system.

Section 7 of the bill contained a drafting error that would have inadvertently required two public votes, rather than one. Because sections 2, 9, 10, and 11 all ensure a public vote, vetoing this section will not affect the requirement of voter approval. This section also included language requiring a plan and public hearings; however, section 3 and other parts of the bill provide sufficient opportunities for the city council to ensure an open, public process and careful consideration of any monorail plan.



Section 18 would have rendered the entire bill null and void if a "regional transportation act does not become law by December 31, 2002." On March 21, 2002, I signed into law a regional transportation act, Engrossed Second Substitute Senate Bill No. 6140, making section 18 moot. Vetoing the moot section will help reduce confusion.

For these reasons, I have vetoed sections 7 and 18 of Engrossed Substitute Senate Bill No. 6464.

With the exception of sections 7 and 18, Engrossed Substitute Senate Bill No. 6464 is approved."

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## CHAPTER 249

[Engrossed Senate Bill 6630]

### ELECTRICIANS

AN ACT Relating to certification of electricians; and amending RCW 19.28.006, 19.28.041, 19.28.061, 19.28.161, 19.28.191, 19.28.201, 19.28.211, and 19.28.241.

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

**Sec. 1.** RCW 19.28.006 and 2001 c 211 s 1 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 19.28.311.

(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, insulates, or is operated by electricity but does not mean: Plug-in ((household)) appliances; or plug-in equipment as determined by the department by rule.

(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) "Master electrician" means either a master journeyman electrician or master specialty electrician.

(12) "Master journeyman electrician" means a person who has been issued a master journeyman electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(13) "Master specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(14) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department.

**Sec. 2.** RCW 19.28.041 and 2001 c 211 s 3 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, restricted nonresidential maintenance, appliance repair, 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)) an electrical 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))~~ a valid master journeyman electrician's certificate of competency, master specialty electrician's certificate of competency in the specialty for which application has been made, or 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.

(6) Administrator certificate specialties include but are not limited to: Residential, ~~((domestic, appliance,))~~ pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW 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.

Sec. 3. RCW 19.28.061 and 1996 c 241 s 3 are each amended to read as follows:

(1) Each applicant for an electrical contractor's license, other than an individual, shall designate a supervisory employee or member of the firm to take the required master electrician's or administrator's examination. Effective July 1, 1987, a supervisory employee designated as the electrical contractor's master electrician or administrator shall be a full-time supervisory employee. This person shall be designated as master electrician or administrator under the license. No person may concurrently qualify as master electrician or administrator for more than one contractor. If the relationship of the master electrician or administrator with the electrical contractor is terminated, the contractor's license is void within ninety days unless another master electrician or administrator is qualified by the board. However, if the master electrician or administrator dies or is otherwise incapacitated, the contractor's license is void within one hundred eighty days unless another master electrician or administrator is qualified by the board. ~~((A certificate issued under this section is valid for two years from the nearest birthdate of the administrator, unless revoked or suspended, and further is nontransferable.))~~ The contractor must notify the department in writing within ten days if the master electrician's or administrator's relationship with the contractor terminates due to the master electrician's or administrator's death or incapacitation.

(2) The department must issue an administrator's certificate to all applicants who have passed the examination as provided in RCW 19.28.051 and this section, and who have complied with the rules adopted under this chapter. The administrator's certificate must bear the date of issuance, expires on the holder's birthday, and is nontransferable. The certificate must be renewed every three years, upon application, on or before the holder's birthday.

(a) 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 by appropriate application without examination unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date.

(b) The contents and requirements for satisfactory completion of the continuing education course must be determined by the director and approved by the board.

(c) The department must 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 if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate.

(3) A fee must be assessed for each administrator's certificate and for each renewal. An individual holdin more than one administrator's certificate under this chapter is not required to pay fees for more than one certificate. The department must set the fees b rule for issuance apd renewal of a certificate. The fees must

cover, but not exceed, the costs of issuing the certificates and of administering and enforcing the administrator certification requirements of this chapter.

(4) The department may deny an application for an administrator's certificate for up to two years if the applicant's previous administrator's certificate has been revoked for a serious violation and all appeals concerning the revocation have been exhausted. For the purposes of this section only, a serious violation is a violation that presents imminent danger to the public. The certificate may be renewed for a ~~((two-year))~~ three-year period without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. ~~((An individual holding more than one administrator's certificate under this chapter shall not be required to pay annual fees for more than one certificate.))~~ A person may take the administrator's ~~((test))~~ examination as many times as necessary to pass without limit.

~~((2))~~ (5) The designated master electrician or administrator shall:

(a) Be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator under this section;

(b) Ensure that all electrical work complies with the electrical installation laws and rules of the state;

(c) Ensure that the proper electrical safety procedures are used;

(d) Ensure that all electrical labels, permits, and licenses required to perform electrical work are used;

(e) See that corrective notices issued by an inspecting authority are complied with; and

(f) Notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.

~~((3))~~ (6) The department shall not by rule change the administrator's duties under subsection ~~((2))~~ (5) of this section.

**Sec. 4.** RCW 19.28.161 and 1997 c 309 s 1 are each amended to read as follows:

(1) No person may engage in the electrical construction trade without having a ~~((current))~~ valid master journeyman electrician certificate of competency, journeyman electrician certificate of competency, master specialty electrician certificate of competency, or ~~((a-current))~~ specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, ~~((domestic appliances,))~~ pump and irrigation, limited energy system, signs, ~~((and))~~ nonresidential maintenance, restricted nonresidential maintenance, and appliance repair.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journeyman electrician, journeyman electrician,

master specialty electrician in that electrician's specialty, or ((a-certified)) specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or ((a)) specialty electrician working in ((his or her)) that electrician's specialty. The holder of the electrical training certificate shall renew the certificate ((annually)) biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous ((year)) biennial period and the number of hours worked for each employer. ((An annual)) A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or ((an appropriate)) specialty electrician ((who has an applicable certificate of competency issued under this chapter)) working in that electrician's specialty

Either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or ((an appropriate)) specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journeymen electricians, journeymen electricians, master specialty electricians, or specialty electricians ((working)) on ((a)) any one job site ((shall be)) is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals ((working on any one job site)) for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician ((working as a specialty electrician)), except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction

program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journeyman electrician, not more than one noncertified individual ((working on any one job site)) for every certified master journeyman electrician or journeyman electrician, except that the ratio requirements shall be one certified master journeyman electrician or journeyman electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46A-930(2)(a)), pump and irrigation (as specified in WAC 296-46A-930(2)(b)(i)), sign (as specified in WAC 296-46A-930(2)(c)), limited energy (as specified in WAC 296-46A-930(2)(e)(i)), nonresidential maintenance (as specified in WAC 296-46A-930(2)(f)(i)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(f)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor.



Sec. 5. RCW 19.28.191 and 1997 c 309 s 3 are each amended to read as follows:

(1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journeyman electrician, journeyman electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journeyman electrician certificate of competency in effect for the previous four years and a valid general administrator's certificate may apply for a master journeyman electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) To be eligible to take the examination for a master journeyman electrician certificate of competency the applicant must have possessed a valid journeyman electrician certificate of competency for four years.

(d) To be eligible to take the examination for a master specialty electrician certificate of competency the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(e) To be eligible to take the examination for a journeyman certificate of competency the applicant must have:

(i) Worked in the electrical construction trade for a minimum of ~~((four years employed full time))~~ eight thousand hours, of which ~~((two years))~~ four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journeyman electrician or journeyman electrician and not more than a total of ~~((two years))~~ four thousand hours in all specialties under the supervision of a ~~((journeyman electrician or an appropriate specialty electrician))~~ master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journeyman electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

~~((fb))~~ (f) To be eligible to take the examination ~~((to become))~~ for a specialty electrician certificate of competency the applicant ((shall)) must have:

(i) Worked in ~~((that specialty of the electrical construction trade, under the supervision of a journeyman electrician or an appropriate specialty electrician, for a minimum of two years employed full time))~~ the residential (as specified in WAC 296-46A-930(2)(a)), pump and irrigation (as specified in WAC 296-46A-930(2)(b)(i)), sign (as specified in WAC 296-46A-930(2)(c)), limited energy (as

specified in WAC 296-46A-930(2)(e)(i), nonresidential maintenance (as specified in WAC 296-46A-930(2)(f)(i)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties as determined by the department in rule under the supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours; or

(ii) Worked in the appliance repair specialty as determined by the department in rule or a specialty other than the designated specialties in (f)(i) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The initial period must be spent under one hundred percent supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (f)(i) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department; or

(iii) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade.

((~~e~~)) (g) Any applicant for a journeyman electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW may substitute up to two years of the technical or trade school program for two years of work experience under a master journeyman electrician or journeyman electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journeyman electrician certificate of competency.

((~~d~~)) (h) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty

electrician working in that electrician's specialty. Any applicant who has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(i) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journeyman electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(j) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, full-time basis means two thousand hours.

**Sec. 6.** RCW 19.28.201 and 200I c 211 s 13 are each amended to read as follows:

The department, in coordination with the board, shall prepare an examination to be administered to applicants for master journeyman electrician, journeyman electrician, master specialty electrician, and specialty electrician certificates of competency.

The department, with the consent of the board, may enter into a contract with a professional testing agency to develop, administer, and score electrician certification examinations. The department may set the examination fee by contract with the professional testing agency.

The department must, at least four times annually, administer the examination to persons eligible to take it under RCW 19.28.191. The fee must cover, but not exceed, the costs of preparing and administering the examination.

The department must certify the results of the examination upon the terms and after such a period of time as the department, in cooperation with the board, deems necessary and proper.

(1)(a) The master electrician's certificates of competency examinations must include questions from the following categories to ensure proper safety and protection for the general public: (i) Safety; (ii) the state electrical code; and (iii) electrical theory.

(b) A person may take the master electrician examination as many times as necessary without limit. All applicants must, before taking the examination, pay the required examination fee to the agency administering the examination.

(2) The journeyman electrician and specialty electrician examinations shall be constructed to determine:

((1)) (a) 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)) (b) 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 19.28.191. 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.)~~

A person may take the examination as many times as necessary without limit. All applicants must, before taking the examination, pay the required examination fee to the agency administering the examination.

**Sec. 7.** RCW 19.28.211 and 2001 c 211 s 14 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.201, and who have complied with RCW 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate 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 master electrician, journeyman electrician, or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work.

**Sec. 8.** RCW 19.28.241 and 2001 c 211 s 17 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 19.28.161 through 19.28.271 or any rule adopted under this chapter, or

(d) The holder thereof has committed a serious violation of this chapter or any rule adopted under this chapter. A serious violation is a violation that presents imminent danger to the public.

(2) The department may deny an application for a certificate of competency for up to two years if the applicant’s previous certificate of competency has been revoked.

~~((2))~~ (3) 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))~~ (4) 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. 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.

Passed the Senate March 11, 2002.  
Passed the House March 8, 2002.  
Approved by the Governor March 29, 2002.  
Filed in Office of Secretary of State March 29, 2002.

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**CHAPTER 250**

[Engrossed Substitute House Bill 2326]

**CLIMATE AND RURAL ENERGY DEVELOPMENT CENTER**

AN ACT Relating to the Washington climate and rural energy development center; adding new sections to chapter 28B.30 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The legislature makes the following findings:

(1) A vast and growing body of research and information about changes to our global, national, and regional climates is being produced by a variety of sources.

(2) Much of this research and information holds important value in helping scientists, citizens, businesses, and public policymakers understand how Washington may be affected by these changes.

(3) It is in the public interest to support efforts to promote discussion and understanding of the potential effects of climate change on Washington’s water supply, agriculture, natural resources, coastal infrastructure, public health, and economy, and to encourage the formulation of sound recommendations for avoiding, mitigating, and responding to those effects.

(4) The state should support the establishment of a central clearinghouse to serve as an impartial, unbiased source of credible and reliable information about climate change for the public.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout sections 3 through 5 of this act unless the context clearly requires otherwise.

(1) "Center" means the Washington climate and rural energy development center.

(2) "Clean energy activities" means: (a) Activities related to renewable resources including electricity generation facilities fueled by water, wind, solar energy, geothermal energy, landfill gas, or bioenergy; (b) programs and industries promoting research, development, or commercialization of fuel cells and qualified alternative energy resources as defined in RCW 19.29A.090; (c) energy efficiency measures or technologies; and (d) technologies designed to significantly reduce the use of or emissions from motor vehicle fuels.

(3) "Climate change" means a change of climate attributed directly or indirectly to human activity that alters the composition of the global atmosphere.

**NEW SECTION. Sec. 3.** The legislature authorizes the establishment of the Washington climate and rural energy development center in the Washington State University energy program to serve as a central, nonregulatory clearinghouse of credible and reliable information addressing various aspects of climate change and clean energy activities.

**NEW SECTION. Sec. 4.** The center shall be funded through grants, and voluntary monetary and in-kind contributions.

**\*NEW SECTION. Sec. 5. (1) *The duties of the center may include, but are not limited to:***

**(a) *Collecting and sharing scientific and technological data related to climate change;***

**(b) *Collecting and sharing information which could be used on a voluntary basis to respond to potential climate change impacts should they occur;***

**(c) *Collecting and sharing information about clean energy activities in the rural areas of the state, including information about state resources available for developing such clean energy opportunities;***

**(d) *Advising relevant sectors of prospective commercial opportunities;***

**(e) *Studying and advising the legislature on the potential: (i) Impacts of climate change in the state; and (ii) effects of early action by the state, before action by the federal government or other state governments, on the state's competitive position with respect to other states;***

**(f) *Accomplishing any other duty assigned to it by the legislature for which adequate funding is provided; and***

**(g) *Providing a biennial report to the governor and the appropriate legislative committees by December 31st regarding its operations.***

**(2) *The center shall, within available funds, also:***

*(a) Identify key sectors within the state likely to be affected adversely by climate change;*

*(b) Examine and report the feasibility of a carbon storage program for the state by:*

*(i) Evaluating other states' and nations' attempts to establish carbon credit programs, carbon storage programs, carbon storage requirements worldwide, and methods and scientific programs that are used to implement carbon storage programs;*

*(ii) Analyzing other programs in the state of Washington, including the conservation reserve enhancement program, that could facilitate a carbon storage program and a stable carbon storage market;*

*(iii) Analyzing methods to encourage and increase appropriate carbon storage activities; and*

*(iv) Developing and preparing appropriate legislative responses and recommendations; and*

*(c) Publicize mitigation projects and efforts to address climate change that include evaluations of whether those efforts were deemed to be successful.*

*(3) The following agencies and programs will work with the center to assist with the duties under this section: The department of community, trade, and economic development, the department of ecology, the department of transportation, the department of health, the department of fish and wildlife, the department of agriculture, the department of natural resources, and the Washington State University energy program.*

*(4) The legislature may appoint one member from each legislative caucus to serve on a legislative oversight committee for the center.*

*(5) The center shall establish task forces and technical advisory committees, balanced in representation and composed of state and local agencies and interested elected leaders, businesses, labor groups, timber industry groups, agricultural groups, nonprofit organizations, university and college programs, and citizens as necessary to assist in the duties in this section.*

*\*Sec. 5 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 6. This act takes effect July 1, 2002.

NEW SECTION. Sec. 7. Sections 2 through 5 of this act are each added to chapter 28B.30 RCW.

Passed the House February 16, 2002.

Passed the Senate March 8, 2002.

Approved by the Governor March 29, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 29, 2002.



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

"I am returning herewith, without my approval as to section 5, Engrossed Substitute House Bill No. 2326 entitled:

"AN ACT Relating to the Washington climate and rural energy development center:"

This bill establishes the Washington Climate and Rural Energy Development Center in the Washington State University energy program. It designates that center as a clearinghouse of credible and reliable information regarding climate change and clean energy activities. Global warming and climate change are issues of profound importance, and I support this bill.

However, section 5 of the bill is unduly prescriptive and would have inhibited academic freedom. The Center will be funded entirely by project grants and voluntary contributions. Accordingly, it is appropriate to provide the Center with flexibility in the kinds of grants it receives and activities it pursues.

Section 5 also would have mandated that certain state agencies provide assistance to the Center for its activities. However, the bill does not assign specific or measurable tasks to the agencies or provide funding for that assignment.

For these reasons, I have vetoed section 5 of Engrossed Substitute House Bill No. 2326.

With the exception of section 5, Engrossed Substitute House Bill No. 2326 is approved."

## CHAPTER 251

[Substitute House Bill 2502]

### FOREST PRODUCTS COMMISSION

AN ACT Relating to the forest products commission; amending RCW 15.100.010, 15.100.030, and 15.100.040; and adding a new section to chapter 15.100 RCW.

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

**\*Sec. 1. RCW 15.100.010 and 2001 c 314 s 1 are each amended to read as follows:**

***(1) The legislature finds that the creation of a forest products commission would assist in expanding the state's economy, because:***

***~~((1))~~ (a) Marketing is a dynamic and changing part of the Washington forest products industry and a vital element in expanding the state economy;***

***~~((2))~~ (b) The sale in the state and export to other states and abroad of forest products made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and are key components of the health of many local communities because many secondary businesses are largely dependent on the health of the forest products industry; ~~(and~~***

***~~(3))~~ (c) Forest products are made from a renewable resource and are more environmentally sound than many alternative products;***

***(d) Proper promotion of forest products is vital to the producers of these products and the continued economic well-being of the citizens of the state; and***

***(e) Research related to managed forests and the promotion of managed forests can yield critical information for complying with the existing comprehensive state and federal scheme regulating timber harvest.***

**(2) The legislature also finds that any advertising, marketing, and public education related to the sale of forest products by the forest products commission is government speech that provides a benefit for the citizens of the state and is thereby entitled to first amendment protection.**

\*Sec. 1 was vetoed. See message at end of chapter.

**Sec. 2.** RCW 15.100.030 and 2001 c 314 s 3 are each amended to read as follows:

(1)(a) There is created a commodity commission to be known and designated as the Washington forest products commission. The commission is composed of nine voting members. The commission may, in its sole discretion, add or remove nonvoting ex officio members to the commission. Of the members, six shall be from western Washington, and three shall be from eastern Washington. After the initial election of commission members, however, if a position cannot be filled by a member from eastern Washington within sixty days from the date on which nominations may first be received because of a lack of candidates, the position may be filled by a member from western Washington. Under no circumstances will there be less than two board members from eastern Washington. If a position was filled by a member from western Washington because of a lack of candidates from eastern Washington, and districts are not used for the nomination and election of members, then a person from eastern Washington must fill the next available vacancy or open position at the next election to bring the number of representatives from eastern Washington up to three members. All members shall be elected by the entire group of producers unless the commission creates districts for the members as authorized in RCW 15.100.050. If districts are used for the nomination and election of commission members, and it does not appear that one of the positions from eastern Washington will be filled because of a lack of candidates, then a commission member who resides in western Washington must be elected by the entire group of producers as an at-large member. The position of the western Washington member who is elected as an at-large member shall be filled by a member from eastern Washington at the expiration of the term of the at-large member. If districts are not used for the nomination and election of members, the commission shall strive to achieve representation on the commission from the different geographic regions of the state.

(b) Of the six members from western Washington, three members must have annual harvests of more than seventy-five million board feet, and three members must have annual harvests between two million board feet and seventy-five million board feet.

(c) Of the two members from eastern Washington, one member must have an annual harvest greater than forty million board feet, and one member must have an annual harvest between two million board feet and forty million board feet. If there is a third member from eastern Washington, the only harvest requirement is that the member have an annual harvest of at least two million board feet.

(2) The members must be citizens and residents of this state, and over the age of twenty-one years. Each member must currently, and for the five years last preceding his or her election, be actually engaged in producing forest products within the state of Washington, either individually or as an officer of a corporation, firm, partnership, trust, association, or business organization at the level of production required to qualify as a producer. Each member must also derive a substantial amount of his or her income from the production of forest products. The qualifications set forth in this section apply throughout each member's term of office.

(3) No more than one member of the commission may be employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, trust, association, or business organization.

(4) Five voting members of the commission constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

(5) The regular term of office of the members is four years from November 1st following their election and until their successors are elected and qualified. However, the first terms of the members elected in the initial November 1st (~~(; 2001);~~) election is as follows: Positions one, four, and seven terminate on November 1st, ((2003)) two years after the initial election is held; positions two, five, and eight terminate on November 1st, ((2004)) three years after the initial election is held; and positions three, six, and nine terminate on November 1st, ((2005)) four years after the initial election is held.

**Sec. 3.** RCW 15.100.040 and 2001 c 314 s 4 are each amended to read as follows:

(1) The director shall call the initial meeting of producers of forest products for the purpose of nominating their respective members of the commission after receiving notice from an association representing producers of forest products that substantial interest exists in forming a forest products commission. Public notice of the meeting shall be given by the director in the manner the director determines is appropriate. A producer may on his or her own motion file his or her name with the director for the purpose of receiving notice of the meeting. The nonreceipt of the notice by any interested person does not invalidate the proceedings.

(2) Prior to the nomination of commission members, the department of revenue shall provide the director with a list of all qualified producers within the state based upon tax records of the department.

(3) For the initial election of commission members, any qualified producer may be nominated orally for a commissioner position at the meeting convened by the director. Nominations may also be made within five days prior to the meeting by a written petition filed with the department, signed by at least five producers who reside in the state. If the director determines that one of the positions from eastern Washington will go unfilled because of a lack of candidates, the director shall announce that this position shall be filled by a member from western Washington. If the position designated for eastern Washington is filled by a

member from western Washington because of a lack of candidates from eastern Washington, this position shall be designated as position number seven by the director for purposes of RCW 15.100.030(5). Under no circumstances will there be less than two board members from eastern Washington.

(4) The initial members of the commission shall be elected by secret mail ballot under the supervision of the director at the same time the referendum is submitted under RCW 15.100.120 calling for the creation of the commission and the imposition of the initial assessment. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(5) If the director determines under RCW 15.100.120(3) that the requisite approval for the establishment of a commission has not been given, any subsequent efforts to create a commission must follow the procedures established under this chapter for the initial nomination and election of members.

NEW SECTION. Sec. 4. A new section is added to chapter 15.100 RCW to read as follows:

The association responsible for giving the director notice under RCW 15.100.040 that substantial interest exists in forming a forest products commission shall reimburse the department for its costs associated with conducting a proceeding to initiate a commission under RCW 15.100.040 and 15.100.120. If the necessary approval is received for the creation of a commission, the commission shall reimburse the association for the costs paid to the department when funds become available.

Passed the House February 12, 2002.

Passed the Senate March 6, 2002.

Approved by the Governor March 29, 2002, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 29, 2002.

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

"I am returning herewith, without my approval as to section 1, Substitute House Bill No. 2502 entitled:

"AN ACT Relating to the forest products commission;"

Substitute House Bill No. 2502 revises procedures regarding the election of commissioners to the Forest Products Commission. I support these changes.

However, subsection 1(2) of this bill stated that any advertising, marketing and public education related to the sale of forest products by the commission "is government speech that provides a benefit for the citizens of the state" and is thereby entitled to First Amendment protection.

In response to a 2001 U.S. Supreme Court decision, *Department of Agriculture vs. United Foods*, questions have been raised regarding the authority of commodity commissions to assess producers for costs associated with advertising, marketing and public education. Subsection 1(2) was an attempt to clarify that the Commission has such authority, and that it does not violate the right to free speech.

The implications of the court decision on the authority of commodity commissions, and the best means by which to address them, are not clear. Rather than doing this in a

piecemeal manner, my preference is that this issue be resolved comprehensively, dealing with all state commodity commissions where appropriate.

For these reasons, I have vetoed section 1 of Substitute House Bill No. 2502.

With the exception of section 1, Substitute House Bill No. 2502 is approved."

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## CHAPTER 252

[Substitute House Bill 2767]

### PUBLIC ASSISTANCE ELECTRONIC BENEFIT CARDS—PROHIBITIONS

AN ACT Relating to public assistance electronic benefit cards; adding a new section to chapter 74.08 RCW; adding new sections to chapter 9.46 RCW; adding a new section to chapter 67.16 RCW; and adding a new section to chapter 67.70 RCW.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 74.08 RCW to read as follows:

(1) Any person receiving public assistance is prohibited from using electronic benefit cards or cash obtained with electronic benefit cards:

(a) For the purpose of participating in any of the activities authorized under chapter 9.46 RCW;

(b) For the purpose of parimutuel wagering authorized under chapter 67.16 RCW; or

(c) To purchase lottery tickets or shares authorized under chapter 67.70 RCW.

(2)(a) The department shall notify, in writing, all recipients of electronic benefit cards that any violation of subsection (1) of this section could result in legal proceedings and forfeiture of all cash public assistance.

(b) Whenever the department receives notice that a person has violated subsection (1) of this section, the department shall notify the person in writing that the violation could result in legal proceedings and forfeiture of all cash public assistance.

(c) The department shall assign a protective payee to the person receiving public assistance who violates subsection (1) of this section.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 9.46 RCW to read as follows:

(1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of participating in any of the activities authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of section 1 of this act.

**NEW SECTION.** **Sec. 3.** A new section is added to chapter 9.46 RCW to read as follows:

The commission shall consider the provisions of section 2 of this act as elements to be negotiated with federally recognized Indian tribes as provided in RCW 9.46.360.

NEW SECTION. **Sec. 4.** A new section is added to chapter 67.16 RCW to read as follows:

(1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of parimutuel wagering authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of section 1 of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 67.70 RCW to read as follows:

(1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards to purchase lottery tickets or shares authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of section 1 of this act.

Passed the House March 11, 2002.

Passed the Senate March 2, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 253

[Senate Bill 5064]

### CHEATING—GAMBLING ACTIVITIES

AN ACT Relating to cheating at gambling; amending RCW 9.46.196; reenacting and amending RCW 9.94A.515; adding new sections to chapter 9.46 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 9.46.196 and 1991 c 261 s 8 are each amended to read as follows:

~~((No person participating in a gambling activity shall in the course of such participation, directly or indirectly))~~ "Cheating." as used in this chapter, means to:

(1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

(2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;

(3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or

(4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

~~((Any person violating this section shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.))~~

NEW SECTION. **Sec. 2.** A new section is added to chapter 9.46 RCW to read as follows:

(1) A person is guilty of cheating in the first degree if he or she engages in cheating and:

(a) Knowingly causes, aids, abets, or conspires with another to engage in cheating; or

(b) Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.

(2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section the court may impose an additional penalty of up to twenty thousand dollars.

**NEW SECTION. Sec. 3.** A new section is added to chapter 9.46 RCW to read as follows:

(1) A person is guilty of cheating in the second degree if he or she engages in cheating and his or her conduct does not constitute cheating in the first degree.

(2) Cheating in the second degree is a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

**Sec. 4.** RCW 9.94A.515 and 2001 2nd sp.s. c 12 s 361, 2001 c 300 s 4, 2001 c 217 s 12, and 2001 c 17 s 1 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(I)) 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 I (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)
  - Sexually Violent Predator Escape (RCW 9A.76.115)
- 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))
  - 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(3)(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(3)(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)
- Cheating 1 (section 2 of this act)
- 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, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (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(3)(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)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- 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)
  - 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 I (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 Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 254

[Senate Bill 5138]

## WEIGHING STATIONS—EXEMPT VEHICLES

AN ACT Relating to vehicles exempt from stopping at weighing stations; and amending RCW 46.44.105.

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

**Sec. 1.** RCW 46.44.105 and 1999 c 23 s 1 are each amended to read as follows:

(1) Violation of any of the provisions of this chapter is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed a penalty for each pound overweight, as follows:

(a) One pound through four thousand pounds overweight is three cents for each pound;

(b) Four thousand one pounds through ten thousand pounds overweight is one hundred twenty dollars plus twelve cents per pound for each additional pound over four thousand pounds overweight;

(c) Ten thousand one pounds through fifteen thousand pounds overweight is eight hundred forty dollars plus sixteen cents per pound for each additional pound over ten thousand pounds overweight;

(d) Fifteen thousand one pounds through twenty thousand pounds overweight is one thousand six hundred forty dollars plus twenty cents per pound for each additional pound over fifteen thousand pounds overweight;

(e) Twenty thousand one pounds and more is two thousand six hundred forty dollars plus thirty cents per pound for each additional pound over twenty thousand pounds overweight.

Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section or the additional penalty assessed in subsection (2) of this section, except as provided for the first violation, be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court shall

secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in RCW 46.32.005, other than the driver of a bus as defined in RCW 46.32.005(2) or a vehicle with a gross vehicle or combination weight not over sixteen thousand pounds and not transporting hazardous materials in accordance with RCW 46.32.005(3), to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open. However, unladen tow trucks regardless of weight and farm vehicles carrying farm produce with a gross vehicle or combination weight not over twenty-six thousand pounds may fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined one thousand dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.



(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "overweight" means the poundage in excess of the maximum allowable gross weight or axle/axle grouping weight prescribed by RCW 46.44.041, 46.44.042, 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under subsections (1) and (2) of this section, the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(11) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(12) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section.

Passed the Senate March 11, 2002.  
Passed the House March 7, 2002.  
Approved by the Governor March 29, 2002.  
Filed in Office of Secretary of State March 29, 2002.

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**CHAPTER 255**

[Substitute Senate Bill 5209]  
**SURPLUS REAL PROPERTY—SALES**

AN ACT Relating to the sale of surplus real property by the department of transportation; amending RCW 47.12.063; and adding a new section to chapter 47.12 RCW.

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

**Sec. 1.** RCW 47.12.063 and 1999 c 210 s 1 are each amended to read as follows:

(1) It is the intent of the legislature to continue the department’s policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;
- (e) The former owner of the property from whom the state acquired title;
- (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

(g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;

(i) To any other owner of real property required for transportation purposes; ((or))

(j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-

income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; or

(k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund.

**NEW SECTION.** **Sec. 2.** A new section is added to chapter 47.12 RCW to read as follows:

For the purposes of this chapter "reservation boundary" means the boundary of the reservation as established by federal law or under the authority of the United States Secretary of the Interior.

Passed the Senate February 13, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 256

[Second Engrossed Substitute Senate Bill 5291]

### LONG-TERM CARE RESIDENT IMMUNIZATION

AN ACT Relating to immunizations at long-term care facilities; adding a new section to chapter 74.42 RCW; and creating new sections.

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

**NEW SECTION.** **Sec. I.** It is the intent of the legislature to ensure that long-term care facilities are safe.

(1) The long-term care resident immunization act is intended to:

(a) Prevent and reduce the occurrence and severity of the influenza virus and pneumococcal disease by increasing the use of immunizations licensed by the food and drug administration;

(b) Avoid pain, suffering, and deaths that may result from the influenza virus and pneumococcal disease;

(c) Improve the well-being and quality of life of residents of long-term care facilities; and

(d) Reduce avoidable costs associated with treating the influenza virus and pneumococcal disease.

(2) The legislature finds that:

(a) Recent studies show that it is important to immunize older citizens against the influenza virus and pneumococcal disease;

(b) The centers for disease control and prevention recommend individuals living in long-term care facilities and those over age sixty-five receive immunizations against the influenza virus and pneumococcal disease;

(c) The influenza virus and pneumococcal disease have been identified as leading causes of death for citizens over age sixty-five; and

(d) Immunizations licensed by the food and drug administration are readily available and effective in reducing and preventing the severity of the influenza virus and pneumococcal disease.

**NEW SECTION. Sec. 2.** A new section is added to chapter 74.42 RCW to read as follows:

(1) Long-term care facilities shall:

(a) Provide access on-site or make available elsewhere for all residents to obtain the influenza virus immunization on an annual basis;

(b) Require that each resident, or the resident's legal representative, upon admission to the facility, be informed verbally and in writing of the benefits of receiving the influenza virus immunization and, if not previously immunized against pneumococcal disease, the benefits of the pneumococcal immunization.

(2) As used in this section, "long-term care facility" is limited to nursing homes licensed under chapter 18.51 RCW.

(3) The department of social and health services shall adopt rules to implement this section.

(4) This section and rules adopted under this section shall not apply to nursing homes conducted for those who rely exclusively upon treatment by nonmedical religious healing methods, including prayer.

**NEW SECTION. Sec. 3.** This act may be known and cited as the long-term care resident immunization act of 2002.

Passed the Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

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**CHAPTER 257**

[Second Substitute Senate Bill 5354]

**MOBILE HOME RELOCATION ASSISTANCE**

AN ACT Relating to mobile home relocation assistance; amending RCW 59.21.010, 59.21.021, and 59.21.050; adding a new section to chapter 59.21 RCW; and providing an effective date.

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

**Sec. 1.** RCW 59.21.010 and 1998 c 124 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) "Director" means the director of the department of community, trade, and economic development.

(2) "Department" means the department of community, trade, and economic development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050.

(4) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(5) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(6) "Relocate" means to remove the mobile home from the mobile home park being closed and to either reinstall it in another location or to demolish it and purchase another mobile/manufactured home constructed to the standards set by the department of housing and urban development.

(7) "Relocation assistance" means the monetary assistance provided under this chapter.

**Sec. 2.** RCW 59.21.021 and 1998 c 124 s 2 are each amended to read as follows:

(1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. The department shall give priority for distribution of relocation assistance to tenants residing in parks that are closed as a result of park-owner fraud or as a result of health and safety concerns as determined by the local board of health. Payments shall be made upon the department's verification of eligibility, subject to the availability of remaining funds. Eligibility for relocation assistance funds is limited to low-income households. As used in this section, "low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the mobile or manufactured home is located.

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home or who dispose of a home not relocatable to a new site.

(3) Persons who removed and disposed of their mobile home or maintained ownership of and relocated their mobile homes are entitled to reimbursement of

actual relocation expenses up to seven thousand dollars for a double-wide home and up to three thousand five hundred dollars for a single-wide home.

(4) Any individual or organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance expenses or other mobile/manufactured home ownership expenses, that include down payment assistance, if the owners are not planning to relocate their mobile home as long as their original home is removed from the park.

NEW SECTION. **Sec. 3.** A new section is added to chapter 59.21 RCW to read as follows:

(1) A one hundred dollar fee is imposed upon the purchaser on every transfer of title issued under chapter 46.12 RCW on a mobile home one year old or more where (a) the ownership of the mobile home changes; and (b) the mobile home is located in a mobile home park. A transfer of title does not include the addition or deletion of a spouse co-owner or secured interest.

(2) Mobile homes with a sale price of less than five thousand dollars are not subject to the fee imposed in subsection (1) of this section.

(3) The department of licensing or its agents shall collect the fee when processing an application for transfer of title. The fee collected under this section shall be forwarded to the state treasurer for deposit into the mobile home park relocation fund created in this chapter. The department of licensing may deduct a percentage amount, not to exceed two percent of the fees collected, for the collection expenses incurred by the department of licensing.

(4) The department of licensing and the state treasurer may adopt rules necessary to carry out this section.

**Sec. 4.** RCW 59.21.050 and 1998 c 124 s 5 are each amended to read as follows:

(1) The existence of the mobile home park relocation fund in the custody of the state treasurer is affirmed. Expenditures from the fund may be used only for relocation assistance awarded under this chapter. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) A park tenant is eligible for assistance under this chapter only after an application is submitted by that tenant or an organization acting on the tenant's account under RCW 59.21.021(4) on a form approved by the director which shall include:

(a) For those persons who maintained ownership of and relocated their homes or removed their homes from the park: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure;

(iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and (iv) a statement of any other available assistance;

(b) For those persons who sold their homes and incurred no relocation expenses: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion.

(3) The department may deduct a percentage amount of the fee collected under section 3 of this act, not to exceed five percent of the fees received, for administration expenses incurred by the department.

**NEW SECTION. Sec. 5.** This act takes effect January 1, 2003.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 258

[Senate Bill 5594]

### JOINT HOUSING AUTHORITIES

AN ACT Relating to the consolidation of housing authorities; and amending RCW 35.82.300.

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

**Sec. I.** RCW 35.82.300 and 1980 c 25 s 1 are each amended to read as follows:

This section applies to all cities and counties.

(1) Joint ~~((city-county))~~ housing authorities are hereby authorized when the legislative ~~((authority of the county))~~ authorities of one or more counties and the legislative ~~((authority))~~ authorities of any city or cities within ((the county)) any of those counties or in another county or counties have authorized such joint ~~((city-county))~~ housing ~~((authorities))~~ authority by ordinance.

(2) The ~~((ordinance))~~ ordinances enacted by the legislative authorities creating the joint housing authority shall prescribe the number of commissioners, the method for their appointment and length of their terms, the election of officers, and the method for removal of commissioners.

(3) The ordinances enacted by the legislative authorities creating the joint housing authority shall prescribe the allocation of all costs of the joint housing authority and any other matters necessary for the operation of the joint housing authority.

(4) A joint ~~((city-county))~~ housing authority shall have all the powers as prescribed by this chapter for any housing authority. The area of operation of a

joint (~~city-county~~) housing authority shall be the combined areas (~~of each as they are~~), defined by RCW 35.82.020(6), of the housing authorities created in each city and county authorizing the joint housing authority.

(5) The provisions of RCW 35.82.040 and 35.82.060 (~~as now or hereafter amended~~) shall not apply to a joint (~~city-county~~) housing authority created pursuant to this section.

Passed the Senate January 30, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 259

[Engrossed Senate Bill 5624]

### LANDLORD DUTIES—FIRE SAFETY INFORMATION

AN ACT Relating to the disclosure of fire protection and building safety information; and amending RCW 59.18.060.

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

**Sec. 1.** RCW 59.18.060 and 1991 c 154 s 2 are each amended to read as follows:

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;



(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weathertight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants as soon as possible, but not later than January 1, 2004; and

(12) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be

designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent((-));

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section.

- Passed the Senate March 11, 2002.
- Passed the House March 8, 2002.
- Approved by the Governor March 29, 2002.
- Filed in Office of Secretary of State March 29, 2002.

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**CHAPTER 260**

[Senate Bill 5629]

**OFFICE OF FINANCIAL MANAGEMENT—REQUIREMENTS FOR STATE AGENCIES**

AN ACT Relating to the office of financial management's budgeting, accounting, and reporting requirements for state agencies; amending RCW 43.88.160, 79.44.040, 79.44.050, 79.44.070, 79.44.080, 79.44.140, and 39.29.040; adding new sections to chapter 39.29 RCW; repealing RCW 79.44.180; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 43.88.160 and 1998 c 135 s 1 are each amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to

perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) Except as provided in chapter 43.88C RCW, the director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance between actual and estimated data to date. The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. The system developed by the director shall include criteria for determining the scope and comprehensiveness of internal controls required by classes of agencies, depending on the level of resources at risk.

Each agency head or authorized designee shall be assigned the responsibility and authority for establishing and maintaining internal audits following the standards of internal auditing of the institute of internal auditors;

(b) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials;

and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(c) Establish policies for allowing the contracting of child care services;

(d) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

(e) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter ~~((said))~~ the plans, except that for the following agencies no amendment or alteration of ~~((said))~~ the plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

(f) Fix the number and classes of positions or authorized ~~((man))~~ employee years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not be empowered to fix ~~((said))~~ the number or ~~((said))~~ the classes for the following: Agencies headed by elective officials;

(g) Adopt rules to effectuate provisions contained in (a) through (f) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Receive, disburse, or transfer public funds under the treasurer's supervision or custody;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Coordinate agencies' acceptance and use of credit cards and other payment methods, if the agencies have received authorization under RCW 43.41.180;

(e) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to disburse public funds in the treasury except upon forms or by alternative means duly prescribed by the director of financial management. These forms or alternative means shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the

case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect (~~and copies thereof are on file with the office of financial management~~); and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made. When services are lawfully paid for in advance of full performance by any private individual or business entity other than equipment maintenance providers or as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services. No payments shall be made in advance for any equipment maintenance services to be performed more than ~~((three))~~ twelve months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official, or employee charged with the receipt, custody, or safekeeping of public funds. Where feasible in conducting examinations, the auditor shall utilize data and findings from the internal control system prescribed by the office of financial management. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include determinations as to whether agencies, in making expenditures, complied with the laws of this state. The state auditor is authorized to perform or participate in performance verifications and performance audits as expressly authorized by the legislature in the omnibus biennial appropriations acts or in the performance audit work plan approved by the joint legislative audit and review committee. The state auditor, upon completing an audit for legal and financial compliance under chapter 43.09 RCW or a

performance verification, may report to the joint legislative audit and review committee or other appropriate committees of the legislature, in a manner prescribed by the joint legislative audit and review committee, on facts relating to the management or performance of governmental programs where such facts are discovered incidental to the legal and financial audit or performance verification. The auditor may make such a report to a legislative committee only if the auditor has determined that the agency has been given an opportunity and has failed to resolve the management or performance issues raised by the auditor. If the auditor makes a report to a legislative committee, the agency may submit to the committee a response to the report. This subsection (6) shall not be construed to authorize the auditor to allocate other than de minimis resources to performance audits except as expressly authorized in the appropriations acts or in the performance audit work plan. The results of a performance audit conducted by the state auditor that has been requested by the joint legislative audit and review committee must only be transmitted to the joint legislative audit and review committee.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken within six months, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110. The director of financial management shall annually report by December 31st the status of audit resolution to the appropriate committees of the legislature, the state auditor, and the attorney general. The director of financial management shall include in the audit resolution report actions taken as a result of an audit including, but not limited to, types of personnel actions, costs and types of litigation, and value of recouped goods or services.

(e) Promptly report any irregularities to the attorney general.

(f) Investigate improper governmental activity under chapter 42.40 RCW.

(7) The joint legislative audit and review committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in chapter 44.28 RCW as well as performance audits and program evaluations. To this end the joint committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs, and generally for an improved level of fiscal management.

**Sec. 2.** RCW 79.44.040 and 1989 c 243 s 14 are each amended to read as follows:

Notice of the intention to make such improvement, or impose any assessment, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed, shall be forwarded by registered or certified mail to the ~~((director of financial management and to the))~~ chief administrative officer of the agency of state government occupying, using, or having jurisdiction over such lands at least thirty days prior to the date fixed for hearing on the resolution or petition initiating ~~((said))~~ the assessment. Such assessing district, shall not have jurisdiction to order such improvement as to the interest of the state in harbor areas and state tidelands until the written consent of the commissioner of public lands to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to ~~((said))~~ those tidelands, and nothing herein shall prevent the city from assessing the proportionate cost of ~~((said))~~ the improvement against any leasehold, contractual, or possessory interest in and to any tideland or harbor area owned by the state: PROVIDED, HOWEVER, That in the case of tidelands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of ~~((said))~~ the port district.

**Sec. 3.** RCW 79.44.050 and 1989 c 243 s 15 are each amended to read as follows:

Upon the approval and confirmation of the assessment roll ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward ~~((to the director of financial management and))~~ to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, ~~((in accordance with such rules and regulations as the director of financial management may provide,))~~ a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case ~~((said))~~ the land has been leased. The chief administrative officer upon receipt of such statement shall cause a proper record to be made in his office of the cost of such assessment upon the lands occupied, used, or under the jurisdiction of his agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same assessing district.

**Sec. 4.** RCW 79.44.070 and 1979 c 151 s 180 are each amended to read as follows:

When any assessing district has made or caused to be made an assessment against such leasehold, contractual, or possessory interest for any such local improvement, the treasurer of ~~((said))~~ that assessing district shall immediately give notice ~~((to the director of financial management and))~~ to the chief administrative officer of the agency having jurisdiction over the lands. ~~((Said))~~ The assessment shall become a lien against the leasehold, contractual, or possessory interest in the same manner as the assessments on other property, and its collection may be enforced against such interests as provided by law for the enforcement of other local improvement assessments: PROVIDED, That ~~((said))~~ the assessment shall not be made payable in installments unless the owner of such leasehold, contractual, or possessory interest shall first file with such treasurer a satisfactory bond guaranteeing the payment of such installments as they become due.

**Sec. 5.** RCW 79.44.080 and 1979 c 151 s 181 are each amended to read as follows:

Whenever any assessing district shall have foreclosed the lien of any such delinquent assessments, as provided by law, and shall have obtained title to such leasehold, contractual, or possessory interest, ~~((the director of financial management and))~~ the chief administrative officer of the agency having jurisdiction over the lands shall be notified by registered or certified mail of such action and furnished a statement of all assessments against such leasehold, contractual, or possessory interest, and the chief administrative officer ~~((or director of financial management))~~ shall cause the amount of such assessments to be paid as provided in RCW 79.44.060, and upon the receipt of an assignment from such assessing district, the chief administrative officer shall cancel such lease or contract: PROVIDED, HOWEVER, That unless the assessing district making ~~((said))~~ the local improvement and levying ~~((said))~~ the special assessment shall have used due diligence in the foreclosure thereof, the chief administrative officer ~~((and the director of financial management))~~ shall not be required to pay any sum in excess of what they deem to be the special benefits accruing to the state's reversionary interest in ~~((said))~~ the property: AND PROVIDED FURTHER, That if such delinquent assessment or installment shall be against a leasehold interest in fresh water harbor areas within a port district, the chief administrative officer shall notify the commissioners of ~~((said))~~ that port district of the receipt of such assignment, and ~~((said))~~ the commissioners shall forthwith cancel such lease.

**Sec. 6.** RCW 79.44.140 and 1979 c 151 s 182 are each amended to read as follows:

The provisions of this chapter shall apply to all local improvements initiated after June 11, 1919, including assessments to pay the cost and expense of taking and damaging property by the power of eminent domain, as provided by law: PROVIDED, That in case of eminent domain assessments, it shall not be necessary to forward notice of the intention to make such improvement, but the eminent



domain commissioners, authorized to make such assessment, shall, at the time of filing the assessment roll with the court in the manner provided by law, forward by registered or certified mail (~~to the director of financial management and~~) to the chief administrative officer of the agency using, occupying or having jurisdiction over the lands a notice of such assessment, and of the day fixed by the court for the hearing thereof: PROVIDED, That no assessment against the state's interest in tidelands or harbor areas shall be binding against the state if the commissioner of public lands shall file a disapproval of the same in court before judgment confirming the roll.

**NEW SECTION.** Sec. 7. A new section is added to chapter 39.29 RCW to read as follows:

(1) The office of financial management shall adopt uniform guidelines for the effective and efficient management of personal service contracts and client service contracts by all state agencies. The guidelines must, at a minimum, include:

(a) Accounting methods, systems, measures, and principles to be used by agencies and contractors;

(b) Precontract procedures for selecting potential contractors based on their qualifications and ability to perform;

(c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;

(d) Uniform contract terms to ensure contract performance and compliance with state and federal standards;

(e) Proper payment and reimbursement methods to ensure that the state receives full value for taxpayer moneys, including cost settlements and cost allowance;

(f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;

(g) Adequate contract remedies and sanctions to ensure compliance;

(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;

(i) Financial reporting, record retention, and record access procedures and requirements;

(j) Procedures and criteria for terminating contracts for cause or otherwise; and

(k) Any other subject related to effective and efficient contract management.

(2) The office of financial management shall submit the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2002.

(3) The office of financial management shall publish a guidebook for use by state agencies containing the guidelines required by subsection (1) of this section.

**NEW SECTION.** Sec. 8. A new section is added to chapter 39.29 RCW to read as follows:

(1) A state agency entering into or renewing personal service contracts or client service contracts shall follow the guidelines required by section 7 of this act.

(2) A state agency that has entered into or renewed personal service contracts or client service contracts during a calendar year shall, on or before January 1st of the following calendar year, provide the office of financial management with a report detailing the procedures the agency employed in entering into, renewing, and managing the contracts.

(3) The provisions of this section apply to state agencies entering into or renewing contracts after January 1, 2003.

**NEW SECTION.** **Sec. 9.** A new section is added to chapter 39.29 RCW to read as follows:

(1) 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 section 7 of this act. State agencies shall require agency employees responsible for executing or managing personal service contracts and client service contracts to complete the training course to the satisfaction of the office of financial management. Beginning January 1, 2004, no agency employee may execute or manage personal service contracts or client service contracts unless the employee has completed the training course. Any request for exception to this requirement shall be submitted to the office of financial management in writing and shall be approved by the office of financial management prior to the employee executing or managing the contract.

(2)(a) 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 section 8 of this act. The office of financial management shall conduct the number of audits deemed appropriate by the director of the office of financial management based on funding provided.

(b) The office of financial management shall forward the results of the audits conducted under this section to the governor, the appropriate standing committees of the legislature, and the joint legislative audit and review committee.

**NEW SECTION.** **Sec. 10.** A new section is added to chapter 39.29 RCW to read as follows:

The state auditor and the attorney general shall annually by November 30th of each year provide a collaborative report of contract audit and investigative findings, enforcement actions, and the status of agency resolution to the governor and the policy and fiscal committees of the legislature.

**Sec. 11.** RCW 39.29.040 and 1998 c 101 s 7 are each amended to read as follows:

This chapter does not apply to:

(1) Contracts specifying a fee of less than five thousand dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed five thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services except as otherwise indicated in this chapter;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation; and

(9) Contracts for bank supervision authorized under RCW 30.38.040.

NEW SECTION. **Sec. 12.** Section 7 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.

NEW SECTION. **Sec. 13.** Sections 8 and 9 of this act take effect January 1, 2003.

NEW SECTION. **Sec. 14.** RCW 79.44.180 (Director of financial management to adopt rules and regulations) and 1979 c 151 s 183 & 1963 c 20 s 14 are each repealed.

Passed the Senate March 11, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 261

[Engrossed Second Substitute Senate Bill 5827]

### JUDGMENT ENFORCEMENT

AN ACT Relating to enforcement of judgments; and amending RCW 6.17.020, 4.16.020, 4.56.200, and 6.36.025.

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

**Sec. 1.** RCW 6.17.020 and 1997 c 121 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court (~~(of record of this state or a district court of this state)~~) has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court (~~(of record of any state)~~) or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. (~~When application is made to the court to grant an additional ten years, the application shall be accompanied by a current and~~) The order granting the application shall contain an updated judgment summary as ((outlined)) provided in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may

seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or 6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020 (2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter . . . , Laws of 2002 (this act) amendments to this section apply to all judgments currently in effect on the effective date of this section, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after the effective date of this section.

**Sec. 2.** RCW 4.16.020 and 1994 c 189 s 2 are each amended to read as follows:

The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) For actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the ~~((ten-year))~~ period is extended ~~((in accordance with))~~ under RCW 6.17.020~~((3))~~ or a similar provision in another jurisdiction.

(3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.029(6), which is issued after July 23, 1989.

**Sec. 3.** RCW 4.56.200 and 1987 c 202 s 117 are each amended to read as follows:

The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) Judgments of the district court of the United States rendered or filed in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof;

(2) Judgments of the district court of the United States rendered in any county in this state other than that in which the real estate of the judgment debtor to be affected is situated, judgments of the supreme court of this state, judgments of the court of appeals of this state, and judgments of the superior court for any county other than that in which the real estate of the judgment debtor to be affected is situated, from the time of the filing of a duly certified abstract of such judgment with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, as provided in this act;

(3) Judgments of a district court of this state rendered or filed as a foreign judgment in a superior court in the county in which the real estate of the judgment debtor is situated, from the time of the filing of a duly certified transcript of the docket of the district court with the county clerk of the county in which such judgment was rendered or filed, and upon such filing said judgment shall become to all intents and purposes a judgment of the superior court for said county; and

(4) Judgments of a district court of this state rendered or filed in a superior court in any other county in this state than that in which the real estate of the judgment debtor to be affected is situated, a transcript of the docket of which has been filed with the county clerk of the county where such judgment was rendered or filed, from the time of filing, with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, of a duly certified abstract of the record of said judgment in the office of the county clerk of the county in which the certified transcript of the docket of said judgment of said district court was originally filed.

**Sec. 4.** RCW 6.36.025 and 1994 c 185 s 6 are each amended to read as follows:

(1) A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any superior court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures,

defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, ~~((or))~~ staying, or extending as a judgment of a superior court of this state and may be enforced, extended, or satisfied in like manner.

(2) Alternatively, a copy of any foreign judgment (a) authenticated in accordance with the act of congress or the statutes of this state, and (b) within the civil jurisdiction and venue of the district court as provided in RCW 3.66.020, 3.66.030, and 3.66.040, may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, ~~((or))~~ staying, transcribing, or extending as a judgment of a district court of this state, and may be enforced, transcribed, extended, or satisfied in like manner.

(3) The lien of any judgment filed under subsection (1) or (2) of this section shall be governed by chapter 4.56 RCW and RCW 6.17.020.

Passed the Senate February 16, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 262

[Senate Bill 5832]

### SHORT SUBDIVISIONS

AN ACT Relating to enabling counties planning under chapter 36.70A RCW to create nine lots in a short subdivision within a designated urban growth area; and amending RCW 58.17.020.

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

**Sec. 1.** RCW 58.17.020 and 1995 c 32 s 2 are each amended to read as follows:

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the

dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership(~~(--PROVIDED, That)~~). However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW may by ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine in any urban growth area.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

(8) "Short plat" is the map or representation of a short subdivision.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

(10) "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

(11) "County treasurer" shall be as defined in chapter 36.29 RCW or the office or person assigned such duties under a county charter.

(12) "County auditor" shall be as defined in chapter 36.22 RCW or the office or person assigned such duties under a county charter.

(13) "County road engineer" shall be as defined in chapter 36.40 RCW or the office or person assigned such duties under a county charter.



(14) "Planning commission" means that body as defined in chapter((s)) 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to perform a planning function or that body assigned such duties and responsibilities under a city or county charter.

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter.

Passed the Senate February 8, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 263

[Second Engrossed Senate Bill 6001]

### LANDLORD-TENANT ACT—FIRE OFFICIALS—SEARCHES

AN ACT Relating to inspections of tenant dwelling units by fire department officials for fire code violations; and reenacting and amending RCW 59.18.150.

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

**Sec. I.** RCW 59.18.150 and 1989 c 342 s 7 and 1989 c 12 s 18 are each reenacted and amended to read as follows:

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.

(b) "Fire official" means an fire official authorized to enforce the state or local fire code.

(4) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

~~((3))~~ (5) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

~~((4))~~ (6) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

~~((5))~~ (7) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing ~~((party))~~ landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

(8) Nothing in this section is intended to abrogate or modify in any way any common law right or privilege.

Passed the Senate March 11, 2002.

Passed the House March 6, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

**CHAPTER 264**

[Substitute Senate Bill 6248]

**COOPER JONES LICENSE PLATE EMBLEMS—BICYCLE SAFETY**

AN ACT Relating to funding bicycle and pedestrian safety; adding a new section to chapter 46.04 RCW; adding a new section to chapter 46.16 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 bicycling and walking are becoming increasingly popular in Washington as clean and efficient modes of transportation, as recreational activities, and as organized sports. Future plans for the state's transportation system will require increased access and safety for

bicycles and pedestrians on our common roadways, and federal transportation legislation and funding programs have created strong incentives to implement these changes quickly. As a result, many more people are likely to take up bicycling in Washington both as a leisure activity and as a convenient, inexpensive form of transportation. Bicyclists are more vulnerable to injury and accident than motorists, and both should be knowledgeable about traffic laws. Bicyclists should be highly visible and predictable when riding in traffic, and be encouraged to wear bicycle safety helmets. Hundreds of bicyclists and pedestrians are seriously injured every year in accidents, and millions of dollars are spent on health care costs associated with these accidents. There is clear evidence that organized training in the rules and techniques of safe and effective cycling can significantly reduce the incidence of serious injury and accidents, increase cooperation among road users, and significantly increase the incidence of bicycle helmet use, particularly among minors. A reduction in accidents benefits the entire community. Therefore, it is appropriate for businesses and community organizations to provide donations to bicycle and pedestrian safety training programs.

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

"Cooper Jones Act license plate emblems" means emblems on valid Washington license plates that display the symbol of bicycle safety created in section 3 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 46.16 RCW to read as follows:

In cooperation with the Washington state patrol and the department of licensing, the traffic safety commission shall create and design, and the department shall issue, Cooper Jones license plate emblems displaying a symbol of bicycle safety that may be used on motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. These license plate emblems will fund the Cooper Jones act and provide funding for bicyclist and pedestrian safety education, enforcement, and encouragement.

Any person may purchase Cooper Jones license plate emblems. The emblems are to be displayed on the vehicle license plates in the manner described by the department, existing vehicular licensing procedures, and current laws. The fee for Cooper Jones emblems shall be twenty-five dollars. All moneys collected shall first go to the department to be deposited into the motor vehicle fund until all expenses of designing and producing the emblems are recovered. Thereafter, the department shall deduct an amount not to exceed five dollars of each fee collected for Cooper Jones emblems for administration and collection expenses. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the proceeds to the bicycle and pedestrian safety account as established in RCW 43.59.150.

Passed the Senate March 11, 2002.

Passed the House March 7, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 265

[Senate Bill 6266]

### CREDITOR/DEBTOR PERSONAL PROPERTY EXEMPTIONS

AN ACT Relating to updating creditor/debtor personal property exemptions; and amending RCW 6.15.010, 6.15.050, and 6.27.160.

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

**Sec. I.** RCW 6.15.010 and 1991 c 112 s 1 are each amended to read as follows:

Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed one thousand dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed fifteen hundred dollars in value, and all family pictures and keepsakes.

(3) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(a) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed two thousand seven hundred dollars in value for the individual or five thousand four hundred dollars for the community, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

(b) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed ~~((one))~~ two thousand dollars in value, of which not more than ~~((one))~~ two hundred dollars in value may consist of cash, and of which not more than ~~((one))~~ two hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities; ~~((and))~~

(c) ~~((Two))~~ For an individual, a motor ~~((vehicles))~~ vehicle used for personal transportation, not to exceed two thousand five hundred dollars ~~((in aggregate value))~~ or for a community two motor vehicles used for personal transportation, not to exceed five thousand dollars in aggregate value;

(d) Any past due, current, or future child support paid or owed to the debtor, which can be traced;

(e) All professionally prescribed health aids for the debtor or a dependent of the debtor; and

(f) To any individual, the right to or proceeds of a payment not to exceed sixteen thousand one hundred fifty dollars on account of personal bodily injury, not

including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or the right to or proceeds of a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. The exemption under this subsection (3)(f) does not apply to the right of the state of Washington, or any agent or assignee of the state, as a lienholder or subrogee under RCW 43.20B.060.

(4) To each qualified individual, one of the following exemptions:

(a) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed five thousand dollars in value;

(b) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed five thousand dollars in value;

(c) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed five thousand dollars in value.

For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon.

**Sec. 2.** RCW 6.15.050 and 1987 c 442 s 305 are each amended to read as follows:

(1) Wages, salary, or other compensation regularly paid for personal services rendered by the debtor claiming the exemption shall not be claimed as exempt under RCW 6.15.010, but the same may be claimed as exempt in any bankruptcy or insolvency proceeding to the same extent as allowed under the statutes relating to garnishments.

(2) No property may be exempt under RCW 6.15.010 from execution, attachment, or garnishment issued upon a judgment for all or any part of the purchase price of the property.

(3) No property may be exempt under RCW 6.15.010 from legal process issued upon a judgment for restitution ordered by a court to be paid for the benefit of a victim of a criminal act.

(4) No property may be exempt under RCW 6.15.010 from legal process issued upon a judgment for any tax levied upon such property.

~~((4))~~ (5) Nothing in this chapter shall be so construed as to prevent a debtor from creating a security interest in personal property which might be claimed as exempt, or the enforcement of such security interest against the property.

~~((5))~~ (6) Nothing in this chapter shall be construed to exempt personal property of a nonresident of this state or of an individual who has left or is about to leave this state with the intention to defraud his or her creditors.

~~((6))~~ (7) Personal property exemptions are waived by failure to claim them prior to sale of exemptible property under execution or, in a garnishment proceeding, within the time specified in RCW 6.27.160.

~~((7))~~ (8) Personal property exemptions may not be claimed by one spouse in a bankruptcy case that is not a joint case or a joint administration of the estate with the bankruptcy estate of the other spouse where (a) bankruptcy is filed by both spouses within a six-month period, and (b) one spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d).

(9) No property may be exempt under RCW 6.15.010 from execution, levy, attachment, or garnishment issued by or on behalf of a child support agency operating under Title IV-D of the federal social security act or by or on behalf of any agent or assignee of the child support agency.

Sec. 3. RCW 6.27.160 and 1988 c 231 s 28 are each amended to read as follows:

(1) A defendant may claim exemptions from garnishment in the manner specified by the statute that creates the exemption or by delivering to or mailing by first class mail to the clerk of the court out of which the writ was issued a declaration in substantially the following form or in the form set forth in RCW 6.27.140 and mailing a copy of the form by first class mail to the plaintiff or plaintiff's attorney at the address shown on the writ of garnishment, all not later than twenty-eight days after the date stated on the writ except that the time shall be extended to allow a declaration mailed or delivered to the clerk within twenty-one days after service of the writ on the garnishee if service on the garnishee is delayed more than seven days after the date of the writ.

[NAME OF COURT]

.....  
Plaintiff

No. ....

.....  
Defendant

CLAIM OF EXEMPTION

.....  
Garnishee

I/We claim the following described property or money as exempt from execution:

.....  
.....  
.....

I/We believe the property is exempt because:

.....  
.....  
.....

..... Print name	..... Print name of spouse, if married
..... Signature	..... Signature
..... Address	..... Address
..... Telephone number	..... Telephone number

(2) A plaintiff who wishes to object to an exemption claim must, not later than seven days after receipt of the claim, cause to be delivered or mailed to the defendant by first class mail, to the address shown on the exemption claim, a declaration by self, attorney, or agent, alleging the facts on which the objection is based, together with notice of date, time, and place of a hearing on the objection, which hearing the plaintiff must cause to be noted for a hearing date not later than fourteen days after the receipt of the claim. After a hearing on an objection to an exemption claim, the court shall award costs to the prevailing party and may also award an attorney's fee to the prevailing party if the court concludes that the exemption claim or the objection to the claim was not made in good faith. The defendant bears the burden of proving any claimed exemption, including the obligation to provide sufficient documentation to identify the source and amount of any claimed exempt funds.

(3) If the plaintiff elects not to object to the claim of exemption, the plaintiff shall, not later than ten days after receipt of the claim, obtain from the court and deliver to the garnishee an order directing the garnishee to release such part of the debt, property, or effects as is covered by the exemption claim. If the plaintiff fails to obtain and deliver the order as required or otherwise to effect release of the exempt funds or property, the defendant shall be entitled to recover fifty dollars from the plaintiff, in addition to actual damages suffered by the defendant from the failure to release the exempt property.

Passed the Senate February 11, 2002.  
 Passed the House March 7, 2002.  
 Approved by the Governor March 29, 2002.  
 Filed in Office of Secretary of State March 29, 2002.

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**CHAPTER 266**  
 [Substitute Senate Bill 6301]  
 GROUP FISHING PERMITS

AN ACT Relating to group fishing permits; adding a new section to chapter 77.32 RCW; and repealing RCW 77.32.235.

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

**NEW SECTION.** **Sec. 1.** A new section is added to chapter 77.32 RCW to read as follows:

A group fishing permit allows a group of individuals to fish and harvest shellfish without individual licenses or the payment of individual license fees. The director must issue a group fishing permit on a seasonal basis to a state-operated facility or state-licensed nonprofit facility or program for physically or mentally disabled persons, mentally ill persons, hospital patients, handicapped persons, seriously or terminally ill persons, persons who are dependent on the state because of emotional or physical developmental disabilities, or senior citizens who are in the care of the facility. The permit is valid only for use during open season.

The commission must adopt rules that provide the conditions under which a group fishing permit must be issued.

**NEW SECTION.** **Sec. 2.** RCW 77.32.235 (Group permits—Exemption from individual license and fee requirement—Conditions) and 1998 c 191 s 20, 1990 c 35 s 4, & 1984 c 33 s 1 are each repealed.

Passed the Senate March 11, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

## CHAPTER 267

[Substitute Senate Bill 6342]

### SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

AN ACT Relating to authorizing the simplified sales and use tax administration act; adding a new chapter to Title 82 RCW; providing an effective date; and providing a contingent effective date.

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

**NEW SECTION.** **Sec. 1.** This chapter shall be known and cited as the "simplified sales and use tax administration act."

**NEW SECTION.** **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement" means the streamlined sales and use tax agreement as adopted.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.



(4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(5) "Sales tax" means the tax levied under chapter 82.08 RCW.

(6) "Seller" means any person making sales, leases, or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the tax levied under chapter 82.12 RCW.

**NEW SECTION. Sec. 3.** The legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all vendors to collect this state's sales and use tax. The legislature further finds that this state should participate in multistate discussions to review or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

**NEW SECTION. Sec. 4.** (1) For the purposes of reviewing or amending the agreement embodying the simplification requirements in section 7 of this act, the state shall enter into multistate discussions. For purposes of these discussions, the state shall be represented by the department. The governor may appoint up to four persons to consult with the department at these discussions. The persons advising the department shall not be compensated and are not entitled to payment of travel expenses by the state.

(2) The department shall regularly consult with an advisory group composed of one member from each of the two largest caucuses of the senate, appointed by the majority and minority leaders of the senate; one member from each of the two largest caucuses of the house of representatives, appointed by the speaker and minority leader of the house of representatives; representatives of retailers, including those selling via mail, telephone, and the internet; representatives of large and small businesses; and representatives of counties and cities. The department shall use its best efforts to consult with the advisory group before any multistate discussions in which it is anticipated that amendments may be proposed to the agreement embodying the simplification requirements in section 7 of this act.

**NEW SECTION. Sec. 5.** The department shall enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions reasonably required to implement this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with

other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department's designee, may represent this state before the other states that are signatories to the agreement.

**NEW SECTION. Sec. 6.** No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

**NEW SECTION. Sec. 7.** The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the requirements in this section.

(1) The agreement must set restrictions to limit over time the number of state rates.

(2) The agreement must establish uniform standards for:

- (a) The sourcing of transactions to taxing jurisdictions;
- (b) The administration of exempt sales; and
- (c) Sales and use tax returns and remittances.

(3) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) The agreement must provide for reduction of the burdens of complying with local sales and use taxes by:

(a) Restricting variances between the state and local tax bases;

(b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2002.

(7) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(8) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

**NEW SECTION. Sec. 8.** The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

**NEW SECTION. Sec. 9.** (1) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(2) Consistent with subsection (1) of this section, no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

**NEW SECTION. Sec. 10.** (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to

determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

NEW SECTION. **Sec. 11.** Upon becoming a member of the streamlined sales and use tax agreement, the department shall prepare legislation conforming state law as necessary and shall provide such legislation to the fiscal committees of the legislature.

NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act take effect July 1, 2002.

NEW SECTION. **Sec. 13.** Sections 10 and 11 of this act become effective when the state becomes a member of the streamlined sales and use tax agreement.

NEW SECTION. **Sec. 14.** Sections 1 through 12 of this act constitute a new chapter in Title 82 RCW.

Passed the Senate February 16, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.

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## AUTHENTICATION

I, Gary Reid, Acting Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2002 regular session (57th Legislature), chapters I through 267, respectively, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 15th day of April, 2002.

A handwritten signature in black ink that reads "Gary Reid". The signature is written in a cursive style with a large initial "G" and "R".

GARY REID  
Acting Code Reviser

