

SIXTY SEVENTH LEGISLATURE - REGULAR SESSION

EIGHTY SECOND DAY

House Chamber, Olympia, Friday, April 2, 2021

The House was called to order at 9:55 a.m. by the Speaker (Representative Lovick presiding).

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

RESOLUTION

HOUSE RESOLUTION NO. 2021-4623, by Representatives Gregerson and Entenman

WHEREAS, The State of Washington helped start Western Governors University (WGU) in 1998 to provide access to affordable education and training opportunities through online, competency-based programs and pledged, along with member states of Western Governors Association, to take appropriate actions to create policies that support the goals of WGU; and

WHEREAS, Ten years ago this spring, the State of Washington enacted policy expanding access to affordable bachelor's and master's degrees for Washington residents through online, competency-based offerings at Western Governors University Washington (WGU Washington); and

WHEREAS, WGU Washington offers high quality, career-focused degree programs in fields vital to the state's economy, including business, health professions, teaching, and information technology; and

WHEREAS, WGU Washington contributes to Washington's educational attainment goal of at least 70 percent of Washington adults achieving a postsecondary credential by 2023; and

WHEREAS, WGU Washington has demonstrated success in providing affordable education and training opportunities for Washington adult learners; improving education quality; expanding access to underserved populations, including veterans; graduating students; and meeting workforce needs; and

WHEREAS, WGU Washington has experienced an enrollment increase from its beginning 850 students in 2011, growing to more than 14,000 full-time students and making Washington home to more WGU students than in any other state in the nation; and

WHEREAS, WGU Washington has awarded more than 25,000 degrees to hard-working, motivated men and women, helping develop the business leaders, nurses, teachers, and information technology professionals needed to keep Washington's economy strong; and

WHEREAS, WGU Washington is committed to helping Washingtonians achieve their dreams for a university degree and career success;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State House of Representatives congratulate Western Governors University on its 10th anniversary in serving the students of Washington State.

There being no objection, HOUSE RESOLUTION NO. 4623 was adopted.

RESOLUTION

HOUSE RESOLUTION NO. 2021-4624, by Representatives Chambers, Boehnke, Mosbrucker, Leavitt, Schmick, Jacobsen, Walsh, Ryu, Wicks, Fitzgibbon, Lovick, Slatter, Caldier, Robertson, Walen, Graham, Klippert, Dolan, Barkis, Dent, and Hoff

WHEREAS, The Washington State House of Representatives, on behalf of a grateful people, recognize our unsung heroes, Long-Term Care Providers, a group of committed individuals who in the face of great adversity, the COVID pandemic, have dedicated their life's work to our most vulnerable populations, those who reside in long-term care settings or receive long-term care services. Long-Term Care Providers serve in varying capacities and provide care and relief in our nursing homes, adult family homes, in-home care, assisted and independent living facilities throughout our State; and

WHEREAS, When the world shut down, some settled in to work from the security of their homes, Long-Term Care Providers suited up for duty and through great acts of inventiveness, created safety gear, took on other duties as assigned, and committed to care for those who could no longer care for themselves. We salute the thousands of loyal health care providers in Washington State and throughout our country; and

WHEREAS, Despite the fear of peril, personal safety, and well-being, Long-Term Care Workers went into the very epicenter of the COVID pandemic and nurtured those who were affected by COVID-19 and those most vulnerable and protected the defenseless from contracting the virus; and

WHEREAS, Despite the uncertainty posed by a novel and virulent Coronavirus, Long-Term Care Workers continued to selflessly report for duty to care for our most vulnerable, often working in less than desirable conditions and encountering long hours and working conditions never before imagined; and

WHEREAS, Long-Term Care Providers courageously provided emotional support to frightened residents and family members alike, quelling their fears in the face of adversity, standing in the gap when they could not see their loved ones all the while quietly fighting their own personal battles with the fallout of the pandemic; and

WHEREAS, Long-Term Care Providers are a shining example of selfless caring and devotion for those they serve and support. Counting others needs greater than their own, they are driven by knowing that they fight for a work and for a cause that is sometimes lost and forgotten; and

WHEREAS, Washington state, our country, and the world are better places for having Long-Term Care Providers here, loving and caring for those in Long-Term Care settings, they are a shining example for those who might follow in their footsteps;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives, on behalf of the people of the State of Washington, recognize and honor the life, work, and sacrifice of Long-Term Care Providers.

There being no objection, HOUSE RESOLUTION NO. 4624 was adopted.

RESOLUTION

HOUSE RESOLUTION NO. 2021-4625, by Representatives Dufault, Corry, Dent, Ybarra, and Mosbrucker

WHEREAS, Norman (Norm) Wayne Childress was born on August 19, 1958, in Yakima, Washington; and

WHEREAS, Norm attended Outlook Elementary School and Sunnyside Junior High School; and

WHEREAS, After his father died, Norm and his family moved to Naches where he participated in three sports at Naches High School, where he graduated in 1976; and

WHEREAS, Norm attended Yakima Valley College; and

WHEREAS, In October 1978, Norm began a 37-year career with the Public Works Department, then called the Benton County Road Department; and

WHEREAS, Norm married his wife, Sandy, on November 2, 1979, and they enjoyed more than 40 years of marriage together; and

WHEREAS, Norm and Sandy had a daughter, Cara Lee, in 1981, and a son, Joshua Wayne, in 1983; and

WHEREAS, Norm was a dedicated father and involved in his children's activities and sports; and

WHEREAS, Norm was a loving grandfather to his grandson, Sebastian; and

WHEREAS, Norm was elected to the Grandview City Council in 1993 and served on that council until 2005 when he was elected Mayor of Grandview, a position he held until 2018; and

WHEREAS, Norm enjoyed many activities, including church league softball and racquetball; and

WHEREAS, Norm retired in 2015, spending time in his workshop and playing poker; and

WHEREAS, Each year, Norm would travel to Las Vegas to play in the World Series of Poker and connect with friends; and

WHEREAS, Norm was elected as Yakima County Commissioner for District 3 in 2018, a position he held until his unfortunate passing; and

WHEREAS, Norm passed away peacefully from pancreatic cancer on September 15, 2020; and

WHEREAS, Norm leaves behind a legacy of public service and enhanced the communities for which he served; and

WHEREAS, Norm is greatly missed by his family, friends, and the people of Yakima County;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives recognize Norman Wayne Childress for his devoted service to the people of Benton County, Grandview, and Yakima County; and

BE IT FURTHER RESOLVED, That a copy of this Resolution be immediately transmitted by the Chief Clerk of the House of Representatives to the family of Norman Wayne Childress.

There being no objection, HOUSE RESOLUTION NO. 4625 was adopted.

RESOLUTION

HOUSE RESOLUTION NO. 2021-4626, by Representative Vick

WHEREAS, Federal, state, local, and tribal police officers across the state of Washington serve with valor, dignity, and integrity; and

WHEREAS, Law enforcement officers throughout Washington State conduct themselves in a manner that supports, maintains, and defends the Constitution of the United States and the Constitution of the State of Washington; and

WHEREAS, Law enforcement officers throughout Washington State risk their own lives to protect the lives of others; and

WHEREAS, Law enforcement is an honorable profession that diligently seeks to make our communities safe and prosperous; and

WHEREAS, Law enforcement officers selflessly run toward emergency situations without concern for their personal well-being; and

WHEREAS, There is no greater sacrifice a law enforcement officer can make for their community than to give their life; and

WHEREAS, Since Washington became an incorporated territory of the United States in 1853, 331 law enforcement officers have been killed in the line of duty in service to the people of Washington State; and

WHEREAS, The family members and friends of fallen law enforcement officers bear the most immediate and profound burden of the absence of their loved ones;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State House of Representatives extend the deepest condolences to the families and loved ones of fallen law enforcement officers and stand in solidarity with the people of Washington State as they celebrate the lives and mourn the loss of these remarkable and selfless heroes who represented the best of their community and whose memory will serve as an inspiration for future generations; and

BE IT FURTHER RESOLVED, That the Washington State House of Representatives honor the commitment and sacrifice of all law enforcement officers currently serving our communities and the State of Washington.

There being no objection, HOUSE RESOLUTION NO. 4626 was adopted.

There being no objection, the House advanced to the fourth order of business.

INTRODUCTION & FIRST READING

HB 1568 by Representatives Bergquist, Gregerson, Ormsby, Leavitt, Berry, Macri, Santos, Duerr, Kloba, Paul and Sullivan

AN ACT Relating to unemployment insurance relief for small businesses; adding a new section to chapter 50.16 RCW; adding new sections to chapter 50.29 RCW; creating new sections; providing expiration dates; and declaring an emergency.

Referred to Committee on Appropriations.

There being no objection, the bill listed on the day's introduction sheet under the fourth order of business was referred to the committee so designated.

There being no objection, the House advanced to the fifth order of business.

REPORTS OF STANDING COMMITTEES

March 31, 2021

HB 1080 Prime Sponsor, Representative Tharinger: Concerning the capital budget. Reported by Committee on Capital Budget

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman; Dye; Eslick; Gilday; Kloba; Kraft; Leavitt; MacEwen; Maycumber;

Mosbrucker; Peterson; Riccelli; Rule; Santos; Sells and Shewmake.

March 31, 2021

HB 1081 Prime Sponsor, Representative Tharinger: Concerning state general obligation bonds and related accounts. Reported by Committee on Capital Budget

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman; Dye; Eslick; Gilday; Kloba; Leavitt; MacEwen; Maycumber; Mosbrucker; Peterson; Riccelli; Rule; Santos; Sells and Shewmake.

MINORITY recommendation: Without recommendation. Signed by Representative Kraft.

March 31, 2021

HB 1406 Prime Sponsor, Representative Frame: Improving the equity of Washington state's tax code by creating the Washington state wealth tax and taxing extraordinary financial intangible assets. Reported by Committee on Finance

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Frame, Chair; Walen, Vice Chair; Chopp; Harris-Talley; Morgan; Orwall; Ramel; Thai and Wylie.

MINORITY recommendation: Do not pass. Signed by Representatives Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase; Stokesbary and Vick.

MINORITY recommendation: Without recommendation. Signed by Representatives Berg, Vice Chair and Springer.

Referred to Committee on Appropriations.

March 31, 2021

2SSB 5000 Prime Sponsor, Committee on Ways & Means: Concerning hydrogen fuel cell electric vehicles. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking

Minority Member; Berry; Chapman; Dent; Duerr; Entenman; Goehner; Griffey; Hackney; Klicker; Lovick; Orcutt; Paul; Ramel; Riccelli; Slatter; Sutherland; Taylor; Valdez and Wicks.

MINORITY recommendation: Do not pass. Signed by Representative McCaslin.

MINORITY recommendation: Without recommendation. Signed by Representative Walsh.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5017 Prime Sponsor, Senator Wellman: Clarifying school district procurement requirements for personal service contracts for construction management, value engineering, constructibility review, and building commissioning. Reported by Committee on Capital Budget

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that school construction procurement processes must comply with the requirements of public works laws specified in chapter 39.04 RCW. Competitive bidding requirements under chapter 39.04 RCW apply to construction contracts by registered contractors. Procurement requirements in RCW 28A.335.190 for public works by school districts are not well defined and may be interpreted as being inconsistent with the requirements of chapter 39.04 RCW and with the authority to contract for personal services under RCW 28A.320.035. The purpose of this act is to make retroactive, remedial, curative, and technical amendments to clarify the intent of RCW 28A.335.190.

Sec. 2. RCW 28A.335.190 and 2013 c 223 s 1 are each amended to read as follows:

(1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, (~~or~~) other construction work by a contractor who meets the criteria in RCW 39.04.350, or other purchases, except books, will equal or exceed the threshold levels specified in subsections (2) and (4) of this section, complete plans and specifications for such work or purchases shall be prepared and notice by

publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids and that specifications and other information may be examined at the office of the board or any other officially designated location. The cost of any public work, improvement, or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment, or supplies, except books, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from forty thousand dollars up to seventy-five thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of seventy-five thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Any school district may purchase goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections pursuant to RCW 72.09.100, including but not limited to furniture, equipment, or supplies. School districts are encouraged to set as a target to contract, beginning after June 30, 2006, to purchase up to one percent of the total goods required by the school districts each year, goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(4) The board may make improvements or repairs to the property of the district through a department within the district without following the public bidding process provided in subsection (1) of this section when the total of such improvements or repairs does not exceed

the sum of seventy-five thousand dollars. Whenever the estimated cost of a building, improvement, repair, or other public works project is one hundred thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed unless the contract is let using the small works roster process in RCW 39.04.155 or under any other procedure authorized for school districts. One or more school districts may authorize an educational service district to establish and operate a small works roster for the school district under the provisions of RCW 39.04.155.

(5) The contract for the work or purchase shall be awarded to the lowest responsible bidder as described in RCW 39.26.160(2) but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(6) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(7) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW 28A.160.195.

(8) This section does not apply to the purchase of Washington grown food.

(9) At the discretion of the board, a school district may develop and implement policies and procedures to facilitate and maximize to the extent practicable, purchases of Washington grown food including, but not limited to, policies that permit a percentage price preference for the purpose of procuring Washington grown food.

(10) As used in this section, "Washington grown" has the definition in RCW 15.64.060.

(11) As used in this section, "price percentage preference" means the percent by which a responsive bid from a responsible bidder whose product is a Washington grown food may exceed the lowest responsive bid submitted by a responsible bidder whose product is not a Washington grown food.

(12) For purposes of this section, "construction work" does not include the following services: (a) Construction management services; (b) value engineering; (c) constructability review; (d) building commissioning; and (e) other construction-related professional and personal services.

(13) Requests for proposals or qualifications, advertisements, bids, or calls for bids pursuant to this section for the services listed under subsection (12) of this section, must include the standard clauses required under RCW 39.19.050.

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."

Correct the title.

Signed by Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Bateman; Kloba; Leavitt; Peterson; Riccelli; Rule; Santos; Sells and Shewmake.

MINORITY recommendation: Do not pass. Signed by Representatives Steele, Ranking Minority Member; Dye; Eslick; Gilday; Kraft; MacEwen; Maycumber and Mosbrucker.

MINORITY recommendation: Without recommendation. Signed by Representatives Abbarno, Assistant Ranking Minority Member McEntire, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5031

Prime Sponsor, Senator Honeyford: Concerning a community aviation revitalization loan program. Reported by Committee on Capital Budget

MAJORITY recommendation: Do pass. Signed by Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority

Member; Bateman; Dye; Eslick; Gilday; Kloba; Kraft; Leavitt; MacEwen; Maycumber; Mosbrucker; Peterson; Riccelli; Rule; Santos; Sells and Shewmake.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5146 Prime Sponsor, Senator Van De Wege: Authorizing the fish and wildlife commission to indemnify the federal government as a condition of securing certain funds. Reported by Committee on Capital Budget

MAJORITY recommendation: Do pass. Signed by Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman; Dye; Eslick; Gilday; Kloba; Kraft; Leavitt; MacEwen; Maycumber; Mosbrucker; Peterson; Riccelli; Rule; Santos; Sells and Shewmake.

Referred to Committee on Rules for second reading.

March 31, 2021

E2SSB 5287 Prime Sponsor, Committee on Ways & Means: Concerning affordable housing incentives. Reported by Committee on Finance

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 84.14.005 and 2007 c 430 s 1 are each amended to read as follows:

(1) The legislature finds:

~~((1))~~ (a) That in many of Washington's urban centers there is insufficient availability of desirable and convenient residential units, including affordable housing units, to meet the needs of a growing number of the public who would live in these urban centers if these desirable, convenient, attractive, affordable, and livable places to live were available;

~~((2))~~ (b) That the development of additional and desirable residential units, including affordable housing units, in these urban centers that will attract and maintain a significant increase in the number of permanent residents in these areas will help to alleviate the detrimental conditions and social liability that tend to exist in the absence of a viable mixed income

residential population and will help to achieve the planning goals mandated by the growth management act under RCW 36.70A.020; and

~~((3))~~ (c) That planning solutions to solve the problems of urban sprawl often lack incentive and implementation techniques needed to encourage residential redevelopment in those urban centers lacking a sufficient variety of residential opportunities, and it is in the public interest and will benefit, provide, and promote the public health, safety, and welfare to stimulate new or enhanced residential opportunities, including affordable housing opportunities, within urban centers through a tax incentive as provided by this chapter.

(2) Therefore, the legislature intends to achieve multiple goals by incentivizing the development of multiple-unit housing including creating additional affordable housing, encouraging urban development and density, increasing market rate workforce housing, developing permanently affordable housing opportunities, promoting economic investment and recovery, and creating family-wage jobs.

Sec. 2. RCW 84.14.010 and 2017 c 52 s 16 are each amended to read as follows:

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

(1) "Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low or moderate-income households.

(2) "Campus facilities master plan" means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for campuses authorized under RCW 28B.45.020.

(3) "City" means either (a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the

growth management act, ~~((8*))~~ (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW 36.70A.215, or (d) any city that otherwise does not meet the qualifications under (a) through (c) of this subsection, until December 31, 2031, that complies with RCW 84.14.020(1)(a)(iii) or section 7(1)(b) of this act.

(4) "County" means a county with an unincorporated population of at least ~~((three hundred fifty thousand))~~ 170,000.

(5) "Governing authority" means the local legislative authority of a city or a county having jurisdiction over the property for which an exemption may be applied for under this chapter.

(6) "Growth management act" means chapter 36.70A RCW.

(7) ~~(("High cost area" means a county where the third quarter median house price for the previous year as reported by the Washington Center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.~~

~~((8*))~~ (8) "Household" means a single person, family, or unrelated persons living together.

~~((9*))~~ (9) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development. ~~((For cities located in high-cost areas, "low-income household" means a household that has an income at or below one hundred percent of the median family income adjusted for family size, for the county where the project is located.~~

~~((10*))~~ (10) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States

department of housing and urban development. ~~((For cities located in high-cost areas, "moderate-income household" means a household that has an income that is more than one hundred percent, but at or below one hundred fifty percent, of the median family income adjusted for family size, for the county where the project is located.~~

~~((11*))~~ (11) "Multiple-unit housing" means a building or a group of buildings 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.

~~((12*))~~ (12) "Owner" means the property owner of record.

~~((13*))~~ (13) "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.

~~((14*))~~ (14) "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.

~~((15*))~~ (15) "Residential targeted area" means an area within an urban center or urban growth area that has been designated by the governing authority as a residential targeted area in accordance with this chapter. With respect to designations after July 1, 2007, "residential targeted area" may not include a campus facilities master plan.

~~((16*))~~ (16) "Rural county" means a county with a population between fifty thousand and seventy-one thousand and bordering Puget Sound.

~~((17*))~~ (17) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

~~((18))~~ (17) "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. 3. RCW 84.14.020 and 2020 c 237 s 2 are each amended to read as follows:

(1)(a) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows:

(i) For properties for which applications for certificates of tax exemption eligibility are submitted under this chapter before July 22, 2007, the value is exempt for ten successive years beginning January 1 of the year immediately following the calendar year of issuance of the certificate; ~~((and))~~

(ii) For properties for which applications for certificates of tax exemption eligibility are submitted under this chapter on or after July 22, 2007, the value is exempt:

(A) For eight successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate; ~~((or))~~

(B) For twelve successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this subsection (1)(a)(ii)(B). For the property to qualify for the twelve-year exemption under this subsection, the applicant must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households, and the property must satisfy that commitment and

any additional affordability and income eligibility conditions adopted by the local government under this chapter. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection (1)(a)(ii)(B) may be satisfied solely through housing affordable to moderate-income households; or

(C) For 20 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this subsection (1)(a)(ii)(C). For the property to qualify for the 20-year exemption under this subsection, the project must be located within one mile of high capacity transit of at least 15 minute scheduled frequency, in a city that has implemented, as of the effective date of this section, a mandatory inclusionary zoning requirement for affordable housing that ensures affordability of housing units for a period of at least 99 years and that has a population of no more than 65,000 as measured on the effective date of this section. To qualify for the exemption provided in this subsection (1)(a)(ii)(C), the applicant must commit to renting at least 20 percent of the dwelling units as affordable to low-income households for a term of at least 99 years, and the property must satisfy that commitment and all required affordability and income eligibility conditions adopted by the local government under this chapter. A city must require the applicant to record a covenant or deed restriction that ensures the continuing rental of units subject to these affordability requirements consistent with the conditions in this subsection (1)(a)(ii)(C) for a period of no less than 99 years. The covenant or deed restriction must also address criteria and policies to maintain public benefit if the property is converted to a use other than which continues to provide for permanently affordable low-income housing consistent with this subsection (1)(a)(ii)(C); and

(iii) Until December 31, 2026, for a city as defined in RCW 84.14.010(3)(d), for 12 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this

chapter and meets the conditions in this subsection (1)(a)(iii). For the property to qualify for the 12-year exemption under this subsection, the applicant must commit to renting or selling at least 20 percent of the multifamily housing units as affordable housing units to low and moderate-income households, the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the local government under this chapter, and the area must be zoned to have an average minimum density equivalent to 15 dwelling units or more per gross acre, or for cities with a population over 20,000, the area must be zoned to have an average minimum density equivalent to 25 dwelling units or more per gross acre. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection (1)(a)(iii) may be satisfied solely through housing affordable to low-income or moderate-income households.

(b) The exemptions provided in (a)(i) ~~((and (ii)))~~ through (iii) of this subsection do not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(c) For properties receiving an exemption as provided in (a)(ii)(B) of this subsection that are in compliance with existing contracts and where the certificate of tax exemption is set to expire after June 11, 2020, but before December 31, 2021, the exemption is extended until December 31, 2021, provided that the property must satisfy any eligibility criteria or limitations provided in this chapter as a condition to the existing exemption for a given property continue to be met. For all properties eligible to receive an extension pursuant to this subsection (1)(c), the city or county that issued the initial certificate of tax exemption, as required in RCW 84.14.090, must notify the county assessor and the applicant of the extension of the certificate of tax exemption.

(2) When a local government adopts guidelines pursuant to RCW 84.14.030(2) and includes conditions that must be satisfied with respect to individual dwelling units, rather than with respect to the multiple-unit housing as a whole or some minimum portion thereof, the exemption may, at the local government's discretion, be limited to the value of the qualifying improvements allocable to

those dwelling units that meet the local guidelines.

(3) 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.

(4) 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.

(5) At the conclusion of the exemption period, the ~~((new or rehabilitated housing cost shall))~~ value of the new housing construction, conversion, or rehabilitation improvements must be considered as new construction for the purposes of ((chapter 84.55 RCW)) chapters 84.55 and 36.21 RCW as though the property was not exempt under this chapter.

(6) For properties that qualified for, satisfied the conditions of, and utilized the exemption under subsection (1)(a)(ii)(A) or (B) of this section, following the initial exemption period or the extension period authorized in subsection (1)(c) of this section, the exemption period may be extended for an additional 12 years for projects that are within 18 months of expiration contingent on city or county approval. For the property to qualify for an extension under this subsection (6), the applicant must meet at a minimum the locally adopted requirements for the property to qualify for an exemption under subsection (1)(a)(ii)(B) of this section as applicable at the time of the extension application, and the applicant commits to renting or selling at least 20 percent of the multifamily housing units as affordable housing units for low-income households.

(7) At the end of both the tenth and eleventh years of an extension, for twelve-year extensions of the exemption, applicants must provide tenants of rent-restricted units with notification of

intent to provide the tenant with rental relocation assistance as provided in subsection (8) of this section.

(8)(a) Except as provided in (b) of this subsection, for any 12-year exemption authorized under subsection (1)(a)(ii)(B) or (iii) of this section after the effective date of this section, or for any 12-year exemption extension authorized under subsection (6) of this section, at the expiration of the exemption the applicant must provide tenant relocation assistance in an amount equal to one month's rent to a qualified tenant within the final month of the qualified tenant's lease. To be eligible for tenant relocation assistance under this subsection, the tenant must occupy an income-restricted unit at the time the exemption expires and must qualify as a low-income household under this chapter at the time relocation assistance is sought.

(b) If affordability requirements consistent, at a minimum, with those required under subsection (1)(a)(ii)(B) or (iii) of this section remain in place for the unit after the expiration of the exemption, relocation assistance in an amount equal to one month's rent must be provided to a qualified tenant within the final month of a qualified tenant's lease who occupies an income-restricted unit at the time those additional affordability requirements cease to apply to the unit.

(9) No new exemptions may be provided under this section beginning on or after January 1, 2032. No extensions may be granted under subsection (6) of this section on or after January 1, 2046.

Sec. 4. RCW 84.14.040 and 2014 c 96 s 4 are each amended to read as follows:

(1) The following criteria must be met before an area may be designated as a residential targeted area:

(a) The area must be within an urban center, as determined by the governing authority;

(b) The area must lack, as determined by the governing authority, sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center, if the affordable, desirable, attractive, and livable places to live were available;

(c) The providing of additional housing opportunity, including affordable housing, in the area, as determined by the governing authority, will assist in achieving one or more of the stated purposes of this chapter; ~~((and))~~

(d) If the residential targeted area is designated by a county, the area must be located in an unincorporated area of the county that is within an urban growth area under RCW 36.70A.110 and the area must be: (i) In a rural county, served by a sewer system and designated by a county prior to January 1, 2013; or (ii) in a county that includes a campus of an institution of higher education, as defined in RCW 28B.92.030, where at least one thousand two hundred students live on campus during the academic year; and (iii) until July 15, 2024, in a county seeking to promote transit supportive densities and efficient land use in an area that is located within a designated urban growth area and within .25 miles of a corridor where bus service is scheduled at least every thirty minutes for no less than 10 hours per weekday and is in service or is planned for service to begin within five years of designation; and

(e) For a residential targeted area designated by a county after the effective date of this section, the county governing authority must conduct an evaluation of the risk of potential displacement of residents currently living in the area if the tax incentives authorized in this chapter were to be used in the area. The county may use an existing analysis if one exists. An area may not be designated as a residential targeted area unless: (i) The evaluation finds that the risk of displacement is minimal; or (ii) the governing authority mitigates the risk of displacement with locally adopted mitigation measures such as, but not limited to, ensuring that those directly or indirectly displaced have a first right of refusal to occupy the newly created dwelling units receiving an exemption under this chapter, including the affordable units if they otherwise meet the qualifications.

(2) For the purpose of designating a residential targeted area or areas, the governing authority may adopt a resolution of intention to so designate an area as generally described in the resolution. The resolution must state the

time and place of a hearing to be held by the governing authority to consider the designation of the area and may include such other information pertaining to the designation of the area as the governing authority determines to be appropriate to apprise the public of the action intended.

(3) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the hearing in a paper having a general circulation in the city or county where the proposed residential targeted area is located. The notice must state the time, date, place, and purpose of the hearing and generally identify the area proposed to be designated as a residential targeted area.

(4) Following the hearing, or a continuance of the hearing, the governing authority may designate all or a portion of the area described in the resolution of intent as a residential targeted area if it finds, in its sole discretion, that the criteria in subsections (1) through (3) of this section have been met.

(5) After designation of a residential targeted area, the governing authority must adopt and implement standards and guidelines to be utilized in considering applications and making the determinations required under RCW 84.14.060. The standards and guidelines must establish basic requirements for both new construction and rehabilitation, which must include:

(a) Application process and procedures;

(b) Income and rent standards for affordable units;

(c) Requirements that address demolition of existing structures and site utilization; and

~~((e))~~ (d) Building requirements that may include elements addressing parking, height, density, environmental impact, and compatibility with the existing surrounding property and such other amenities as will attract and keep permanent residents and that will properly enhance the livability of the residential targeted area in which they are to be located.

(6)(a) The governing authority may adopt and implement, either as conditions to eight-year exemptions or as conditions to an extended exemption period under RCW 84.14.020(1)(a)(ii) (B) or (C), or ~~((both))~~ as conditions to any combination of exemptions authorized under this chapter, more stringent income eligibility, rent, or sale price limits, including limits that apply to a higher percentage of units, than the minimum conditions for an extended exemption period under RCW 84.14.020(1)(a)(ii) (B) or (C).

(b) Additionally, a governing authority may adopt and implement as a contractual prerequisite to any exemption granted pursuant to RCW 84.14.020:

(i) A requirement that applicants pay at least the prevailing rate of hourly wage established under chapter 39.12 RCW for journey level and apprentice workers on residential and commercial construction;

(ii) Payroll record requirements consistent with RCW 39.12.120(1);

(iii) Apprenticeship utilization requirements consistent with RCW 39.04.310; and

(iv) A contracting inclusion plan developed in consultation with the office of minority and women's business enterprises.

(7) For any multiunit housing located in an unincorporated area of a county, a property owner seeking tax incentives under this chapter must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households. In the case of multiunit housing intended exclusively for owner occupancy, the minimum requirement of this subsection ~~((e))~~ (7) may be satisfied solely through housing affordable to moderate-income households.

(8) Nothing in this section prevents a governing authority from adopting and implementing additional requirements to any exemption granted under RCW 84.14.020.

Sec. 5. RCW 84.14.100 and 2012 c 194 s 9 are each amended to read as follows:

(1) Thirty days after the anniversary of the date of the certificate of tax exemption and each year for the tax

exemption period, the owner of the rehabilitated or newly constructed property, or the qualified nonprofit or local government that will assure permanent affordable homeownership for at least 25 percent of the units for properties receiving an exemption under section 7 of this act, must file with a designated authorized representative of the city or county an annual report indicating the following:

(a) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve months ending with the anniversary date;

(b) A certification by the owner that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in RCW 84.14.020 since the date of the certificate approved by the city or county;

(c) A description of changes or improvements constructed after issuance of the certificate of tax exemption; and

(d) Any additional information requested by the city or county in regards to the units receiving a tax exemption.

(2) All cities or counties, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, must report annually by ~~((December 31st))~~ April 1st of each year, beginning in 2007, to the department of commerce. A city or county must be in compliance with the reporting requirements of this section to offer certificates of tax exemption for multiunit housing authorized in this chapter. The report must include the following information:

(a) The number of tax exemption certificates granted;

(b) The total number and type of units produced or to be produced;

(c) The number, size, and type of units produced or to be produced meeting affordable housing requirements;

(d) The actual development cost of each unit produced;

(e) The total monthly rent or total sale amount of each unit produced;

(f) The annual household income ~~((of each renter household at the time of initial occupancy and the income of each~~

~~initial purchaser of owner occupied units at the time of purchase))~~ and household size for each of the affordable units receiving a tax exemption and a summary of these figures for the city or county; and

(g) The value of the tax exemption for each project receiving a tax exemption and the total value of tax exemptions granted.

(3) The department of commerce must provide guidance to cities and counties, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, on best practices in managing and reporting for the exemption programs authorized under this chapter, including guidance for cities and counties to collect and report demographic information for tenants of units receiving a tax exemption under this chapter.

(4) This section expires January 1, 2058.

NEW SECTION. Sec. 6. (1) This section is the tax preference performance statement for the tax preferences contained in section 3, chapter . . . , Laws of 2021 (section 3 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to:

(a) Incentivize developers to construct or rehabilitate multifamily housing;

(b) Incentivize local governments and multifamily housing owners to maintain or expand existing income-restricted unit stock that have been incentivized through the tax exemption provided under chapter 84.14 RCW via new authority to renew the property tax abatement in exchange for continued or additional affordability; and

(c) Further encourage multifamily construction in cities and certain unincorporated urban growth areas by

expanding access to the multifamily tax exemption program to a broader set of jurisdictions.

(4) It is the legislature's intent to provide the value of new housing construction, conversion, and rehabilitation improvements qualifying under chapter 84.14 RCW an exemption from ad valorem property taxation for eight to 12 years or more, as provided for in RCW 84.14.020, in order to provide incentives to developers to construct or rehabilitate multifamily housing thereby increasing the number of affordable housing units, or preserving the state's stock of income-restricted units, for low-income to moderate-income residents in certain urban growth areas.

(5) The legislature intends to extend the expiration date of the tax preferences in section 3, chapter . . . , Laws of 2021 (section 3 of this act), if a review finds that:

(a) Projects receiving an initial eight-year or 12-year exemption regularly enter into subsequent 12-year extensions in exchange for continued or increased income restrictions on affordable units; and

(b) At least 20 percent of the new housing is developed and occupied by households earning:

(i) At or below 80 percent of the area median income, at the time of occupancy, adjusted for family size for the county in which the project is located; or

(ii) Where the housing is intended exclusively for owner occupancy, up to 115 percent of the area median income, at the time of sale, adjusted for family size for the county in which the project is located.

(6) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee must refer to the annual reports compiled by the department of commerce under RCW 84.14.100 and may refer to data provided by counties or cities in which persons are utilizing the preferences, the office of financial management, the department of commerce, the United States department of housing and urban development, and any other data sources, as needed by the joint legislative audit and review committee.

NEW SECTION. **Sec. 7.** A new section is added to chapter 84.14 RCW to read as follows:

(1)(a) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows: For 20 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this section. For the property to qualify for the 20-year exemption under this section, at least 25 percent of the units must be built by or sold to a qualified nonprofit or local government that will assure permanent affordable homeownership. The remaining 75 percent of units may be rented or sold at market rates.

(b) Until December 31, 2031, for a city as defined in RCW 84.14.010(3)(d), in any city the value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows: For 20 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under this chapter and meets the conditions in this section. For the property to qualify for the 20-year exemption under this section, at least 25 percent of the units must be sold to a qualified nonprofit or local government partner that will assure permanent affordable homeownership. The remaining 75 percent of units may be rented or sold at market rates. The area must be zoned to have an average minimum density equivalent to 15 dwelling units or more per gross acre, or for cities with a population over 20,000, the area must be zoned to have an average minimum density equivalent to 25 dwelling units or more per gross acre.

(2) Permanently affordable homeownership units or permanently affordable rental units must be sold or rented to households earning no more than 80 percent of the average median income for the city or local jurisdiction in which the unit is located.

(3) A local jurisdiction may assign and collect an administration fee at each point of sale to cover the administrative costs for oversight of the program to

maintain permanently affordable housing units consistent with this section.

(4) The exemptions in this section do not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(5) At the conclusion of the exemption period, the value of the new housing construction, conversion, or rehabilitation improvements must be considered as new construction for the purposes of chapters 84.55 and 36.21 RCW as though the property was not exempt under this chapter.

(6) For purposes of this section, "permanently affordable homeownership" means homeownership that, in addition to meeting the definition of "affordable housing" in RCW 43.185A.010, is:

(a) Sponsored by a nonprofit organization or governmental entity;

(b) Subject to a ground lease or deed restriction that includes:

(i) A resale restriction designed to provide affordability for future low and moderate-income homebuyers;

(ii) A right of first refusal for the sponsor organization to purchase the home at resale; and

(iii) A requirement that the sponsor must approve any refinancing, including home equity lines of credit; and

(c) Sponsored by a nonprofit organization or governmental entity and the sponsor organization:

(i) Executes a new ground lease or deed restriction with a duration of at least 99 years at the initial sale and with each successive sale; and

(ii) Supports homeowners and enforces the ground lease or deed restriction.

(7) The department of commerce must develop a template for permanent affordability for home or condo ownership through deed restrictions that can be used by a city or local government to ensure compliance with this section.

(8) No new exemptions may be provided under this section beginning on or after January 1, 2032.

NEW SECTION. Sec. 8. (1) This section is the tax preference performance statement for the tax preference contained in section 7, chapter . . . , Laws of 2021 (section 7 of this act).

This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to incentivize developers to construct or rehabilitate permanently affordable homeownership units.

(4) It is the legislature's intent to provide the value of new housing construction, conversion, and rehabilitation improvements qualifying under chapter 84.14 RCW an exemption from ad valorem property taxation for 20 years, as provided for in section 7 of this act, in order to provide incentives to developers to construct or rehabilitate multifamily housing thereby increasing the number of permanently affordable homeownership units.

(5) The legislature intends to extend the expiration date of the tax preferences in section 7, chapter . . . , Laws of 2021 (section 7 of this act), if a review finds that:

(a) The number of local governments utilizing the permanently affordable homeownership tax exemption program authorized in section 7 of this act increases over time;

(b) The number of permanently affordable homeownership units increases; and

(c) The income level of those households benefiting from the permanently affordable homeownership units is consistent with the requirements of section 7 of this act.

(6) In order to obtain the data necessary to perform the review in subsection (5) of this section, the joint legislative audit and review committee must refer to the annual reports compiled by the department of commerce under RCW 84.14.100 and may refer to data provided by counties or cities in which persons are utilizing the preferences, the office of financial management, the department of commerce, the United States department

of housing and urban development, and any other data sources, as needed by the joint legislative audit and review committee.

Sec. 9. RCW 84.14.030 and 2012 c 194 s 3 are each amended to read as follows:

An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city or county;

(2) The multiple-unit housing must meet guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, income limits for occupancy, limits on rents or sale prices, and other adopted requirements indicated necessary by the city or county. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application, plus any extension authorized under RCW 84.14.090 (5);

(5) Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant must provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate; and

(6) The applicant must enter into a contract with the city or county approved by the governing authority, or an administrative official or commission authorized by the governing authority,

under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority.

Sec. 10. RCW 84.14.090 and 2012 c 194 s 8 are each amended to read as follows:

(1) Upon completion of rehabilitation or new construction for which an application for a limited tax exemption under this chapter has been approved and after issuance of the certificate of occupancy, the owner must file with the city or county the following:

(a) A statement of the amount of rehabilitation or construction expenditures made with respect to each housing unit and the composite expenditures made in the rehabilitation or construction of the entire property;

(b) A description of the work that has been completed and a statement that the rehabilitation improvements or new construction on the owner's property qualify the property for limited exemption under this chapter;

(c) If applicable, a statement that the project meets the affordable housing requirements as described in RCW 84.14.020; and

(d) A statement that the work has been completed within three years of the issuance of the conditional certificate of tax exemption.

(2) Within thirty days after receipt of the statements required under subsection (1) of this section, the authorized representative of the city or county must determine whether the work completed, and the affordability of the units, is consistent with the application and the contract approved by the city or county and is qualified for a limited tax exemption under this chapter. The city or county must also determine which specific improvements completed meet the requirements and required findings.

(3) If the rehabilitation, conversion, or construction is completed within three years of the date the application for a limited tax exemption is filed under this chapter, or within an authorized extension of this time limit, and the authorized representative of the city or county determines that improvements were constructed consistent with the application and other applicable requirements, including if applicable, affordable housing requirements, and the

owner's property is qualified for a limited tax exemption under this chapter, the city or county must file the certificate of tax exemption with the county assessor within ten days of the expiration of the thirty-day period provided under subsection (2) of this section.

(4) The authorized representative of the city or county must notify the applicant that a certificate of tax exemption is not going to be filed if the authorized representative determines that:

(a) The rehabilitation or new construction was not completed within three years of the application date, or within any authorized extension of the time limit;

(b) The improvements were not constructed consistent with the application or other applicable requirements;

(c) If applicable, the affordable housing requirements as described in RCW 84.14.020 were not met; or

(d) The owner's property is otherwise not qualified for limited exemption under this chapter.

(5) If the authorized representative of the city or county finds that construction or rehabilitation of multiple-unit housing was not completed within the required time period due to circumstances beyond the control of the owner and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority or the city or county official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed twenty-four consecutive months. For preliminary or final applications submitted on or before February 15, 2020, with any outstanding application requirements, such as obtaining a temporary certificate of occupancy, the city or county may choose to extend the deadline for completion for an additional five years. The five-year extension begins immediately following the completion of any outstanding applications or previously authorized extensions, whichever is later.

(6) The governing authority may provide by ordinance for an appeal of a decision by the deciding officer or

authority that an owner is not entitled to a certificate of tax exemption to the governing authority, a hearing examiner, or other city or county officer authorized by the governing authority to hear the appeal in accordance with such reasonable procedures and time periods as provided by ordinance of the governing authority. The owner may appeal a decision by the deciding officer or authority that is not subject to local appeal or a decision by the local appeal authority that the owner is not entitled to a certificate of tax exemption in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within thirty days of notification by the city or county to the owner of the decision being challenged."

Correct the title.

Signed by Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Harris-Talley; Morgan; Orwall; Ramel; Stokesbary; Thai; Vick and Wylie.

MINORITY recommendation: Do not pass. Signed by Representatives Dufault, Assistant Ranking Minority Member; Chopp and Springer.

MINORITY recommendation: Without recommendation. Signed by Representative Chase.

Referred to Committee on Rules for second reading.

March 31, 2021

SSB 5460 Prime Sponsor, Committee on Transportation: Implementing recommendations of the autonomous vehicle work group. Reported by Committee on Transportation

MAJORITY recommendation: Do pass. Signed by Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry; Chapman; Duerr; Entenman; Goehner; Griffey; Hackney; Klicker; Lovick; Paul; Ramel; Riccelli; Slatter; Taylor; Valdez and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Orcutt and Sutherland.

MINORITY recommendation: Without recommendation. Signed by Representatives Dent; McCaslin and Walsh.

Referred to Committee on Rules for second reading.

There being no objection, the bills listed on the day's committee reports under the fifth order of business were referred to the committees so designated with the exceptions of HOUSE BILL NO. 1080 and HOUSE BILL NO. 1081 which were placed on the second reading calendar.

There being no objection, the House advanced to the eighth order of business.

MOTION

There being no objection, the Committee on Rules was relieved of the following bills and the bills were placed on the second reading calendar:

HOUSE BILL NO. 1532
 HOUSE BILL NO. 1546
 SENATE BILL NO. 5005
 SUBSTITUTE SENATE BILL NO. 5011
 SUBSTITUTE SENATE BILL NO. 5025
 SUBSTITUTE SENATE BILL NO. 5030
 SENATE BILL NO. 5040
 SENATE BILL NO. 5046
 SENATE BILL NO. 5106
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5115
 ENGROSSED SENATE BILL NO. 5135
 SUBSTITUTE SENATE BILL NO. 5152
 SUBSTITUTE SENATE BILL NO. 5157
 ENGROSSED SENATE BILL NO. 5158
 SUBSTITUTE SENATE BILL NO. 5169
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5180
 SENATE BILL NO. 5184
 SUBSTITUTE SENATE BILL NO. 5228
 SENATE BILL NO. 5299
 SUBSTITUTE SENATE BILL NO. 5230
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5245
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5251
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5295
 SUBSTITUTE SENATE BILL NO. 5325
 SUBSTITUTE SENATE BILL NO. 5332
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5355
 ENGROSSED SENATE BILL NO. 5356
 SECOND SUBSTITUTE SENATE BILL NO. 5362
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5370
 SUBSTITUTE SENATE BILL NO. 5384
 SUBSTITUTE SENATE BILL NO. 5425
 SENATE BILL NO. 5430
 SENATE BILL NO. 5431
 ENGROSSED SUBSTITUTE SENATE BILL NO.
 5432
 ENGROSSED SENATE BILL NO. 5372
 SUBSTITUTE SENATE BILL NO. 5381

The Speaker (Representative Lovick presiding) called upon Representative Orwall to preside.

There being no objection, the House reverted to the first order of business.

The House was called to order by the Speaker (Representative Orwall presiding). The Clerk called the roll and a quorum was present.

The Speaker (Representative Orwall presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Mari Leavitt, 28th Legislative District.

There being no objection, the House advanced to the third order of business.

MESSAGES FROM THE SENATE

March 30, 2021

Mme. SPEAKER:

The President has signed:

SUBSTITUTE SENATE BILL NO. 5267,

and the same are herewith transmitted.

Brad Hendrickson, Secretary

March 30, 2021

Mme. SPEAKER:

The Senate has passed:

ENGROSSED SUBSTITUTE SENATE BILL NO. 5083,

and the same are herewith transmitted.

Brad Hendrickson, Secretary

March 30, 2021

Mme. SPEAKER:

The Senate has passed:

SUBSTITUTE HOUSE BILL NO. 1007,
 SUBSTITUTE HOUSE BILL NO. 1037,
 HOUSE BILL NO. 1055,
 ENGROSSED SUBSTITUTE HOUSE BILL NO. 1070,
 ENGROSSED HOUSE BILL NO. 1090,
 HOUSE BILL NO. 1104,
 ENGROSSED HOUSE BILL NO. 1199,
 HOUSE BILL NO. 1378,
 HOUSE BILL NO. 1437,

and the same are herewith transmitted.

Brad Hendrickson, Secretary

April 1, 2021

Mme. SPEAKER:

The Senate has passed:

ENGROSSED SUBSTITUTE SENATE BILL NO. 5092,
and the same are herewith transmitted.

Brad Hendrickson, Secretary

There being no objection, the House advanced to the fourth order of business.

**SUPPLEMENTAL
INTRODUCTION & FIRST READING**

ESSB 5083 by Senate Committee on Ways & Means
(originally sponsored by Frockt, Mullet, Wilson
and C.)

AN ACT Relating to the capital budget; making appropriations and authorizing expenditures for capital improvements; amending RCW 43.19.501, 28B.15.210, 28B.15.310, 28B.20.725, 28B.30.750, 28B.35.370, 28B.50.360, 28B.77.070, 43.63A.750, 39.35D.030, 43.88D.010, and 43.185.050; amending 2019 c 413 ss 1004, 1007, 1010, 1012, 1014, 1058, 1060, 1074, 1079, 1066, 1097, 1098, 1108, 1109, 2034, 2088, 2089, 3020, 3091, 3217, 3235, 3278, 3301, 4002, 4004, 5011, 5020, and 5047, and 2020 c 356 ss 6002, 1003, 1006, 1011, 1013, 1009, 1022, 1027, 3025, 5002, and 5011 (uncodified); reenacting and amending RCW 43.155.050; creating new sections; repealing 2019 c 413 ss 1059 and 1107 (uncodified); making appropriations; and declaring an emergency.

Referred to Committee on Rules.

ESSB 5092 by Senate Committee on Ways & Means
(originally sponsored by Rolfes, Wilson, L.,
Wilson and C.)

AN ACT Relating to fiscal matters; amending RCW 38.52.105, 41.06.280, 41.45.230, 41.80.010, 43.08.190, 43.09.475, 43.43.839, 43.79.195, 43.79.270, 43.79.280, 43.88C.010, 43.99N.060, 43.101.200, 43.101.220, 43.185C.060, 43.320.110, 43.380.020, 46.09.520, 67.16.100, 70A.200.140, 71.24.580, 74.46.561, 76.04.610, 79.64.040, 79.105.150, 79A.25.210, 82.14.310, 83.100.230, 43.70.--, 41.26.450, and 43.88.058; amending 2020 c 127 s 14, 2019 c 415 ss 729, 508, and 1, and 2020 c 357 ss 101, 102, 103, 104, 105, 106, 107, 108, 113, 115, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 147, 148, 149, 150, 201, 202, 203, 204, 205, 206, 207, 208, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 401, 402, 501, 503, 505, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516,

517, 518, 519, 520, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 701, 702, 703, 704, 706, 707, 801, and 804 (uncodified); reenacting and amending RCW 28B.115.070, 43.155.050, 69.50.540, and 79.64.110; adding new sections to chapter 43.79 RCW; adding a new section to chapter 70.48 RCW; adding new sections to 2020 c 357 (uncodified); creating new sections; making appropriations; providing an expiration date; and declaring an emergency.

There being no objection, the bills listed on the day's supplemental introduction sheet under the fourth order of business were referred to the committees so designated, with the exception of ENGROSSED SUBSTITUTE SENATE BILL NO. 5092 which was read the first time, and under suspension of the rules, was placed on the second reading calendar.

There being no objection, the House advanced to the sixth order of business.

SECOND READING

SUBSTITUTE SENATE BILL NO. 5165, by Senate Committee on Transportation (originally sponsored by Hobbs, King, Nobles, Saldaña, Wilson and C.)

Making transportation appropriations for the 2021-2023 fiscal biennium.

The bill was read the second time.

With the consent of the House, amendment (492) was withdrawn.

Representative Fey moved the adoption of striking amendment (488):

Strike everything after the enacting clause and insert the following:

"2021-2023 FISCAL BIENNIUM

NEW SECTION. Sec. 1. (1) The transportation budget of the state is hereby adopted and, subject to the provisions set forth, the several amounts specified, or as much thereof as may be necessary to accomplish the purposes designated, are hereby appropriated from the several accounts and funds 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, 2023.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this act.

(a) "Fiscal year 2022" or "FY 2022" means the fiscal year ending June 30, 2022.

(b) "Fiscal year 2023" or "FY 2023" means the fiscal year ending June 30, 2023.

(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. Unless otherwise specifically authorized in this act, any portion of an amount provided solely for a specified purpose that is not expended subject to the specified conditions and limitations to fulfill the specified purpose shall lapse.

(f) "Reappropriation" means appropriation and, unless the context clearly provides otherwise, is subject to the relevant conditions and limitations applicable to appropriations.

(g) "LEAP" means the legislative evaluation and accountability program committee.

GENERAL GOVERNMENT AGENCIES—OPERATING

NEW SECTION. Sec. 101. FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

Motor Vehicle Account—State
Appropriation \$546,000

NEW SECTION. Sec. 102. FOR THE UTILITIES AND TRANSPORTATION COMMISSION

Grade Crossing Protective Account—
State Appropriation \$504,000

Pilotage Account—State Appropriation
\$150,000

Multimodal Transportation Account—
State Appropriation \$1,832,000

TOTAL APPROPRIATION \$2,486,000

The appropriations in this section are subject to the following conditions and limitations: \$1,832,000 of the multimodal transportation account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute House Bill No. 1418), Laws of 2021 (enhancing rail safety governance). If chapter . . . (Engrossed Substitute House Bill No. 1418), Laws of 2021 is not enacted by June 30, 2021, the multimodal

transportation account—state appropriation of \$1,832,000 provided in this section lapses.

NEW SECTION. Sec. 103. FOR THE OFFICE OF FINANCIAL MANAGEMENT

Motor Vehicle Account—State
Appropriation \$1,441,000

Puget Sound Ferry Operations Account—
State Appropriation \$126,000

TOTAL APPROPRIATION \$1,567,000

NEW SECTION. Sec. 104. FOR THE STATE PARKS AND RECREATION COMMISSION

Motor Vehicle Account—State
Appropriation \$1,186,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation in this section is provided solely for road maintenance purposes.

NEW SECTION. Sec. 105. FOR THE DEPARTMENT OF AGRICULTURE

Motor Vehicle Account—State
Appropriation \$1,358,000

NEW SECTION. Sec. 106. FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

Motor Vehicle Account—State
Appropriation \$668,000

NEW SECTION. Sec. 107. FOR THE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Motor Vehicle Account—State
Appropriation \$2,000,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation in this section is provided solely for increasing the number of certified women and minority-owned contractors outside of the Puget Sound area in the transportation sector and supporting these contractors to successfully compete and earn more transportation contracting opportunities. This shall be done through various programs including but not limited to: (1) Outreach to women and minority business communities and individuals; (2) technical assistance as needed in areas such as financing, accounting, contracting, procurement, and resolution of disputes and grievances; (3) language access programs for those with limited English proficiency; and (4) other programs that

aim to increase the number of women and minority contractors that are successful in obtaining contracts in the transportation sector either directly with state agencies such as the department, with local jurisdictions, or as subcontractors for prime contractors.

NEW SECTION. Sec. 108. FOR THE WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY

Motor	Vehicle	Account—State
Appropriation	\$150,000	

The appropriation in this section is subject to the following conditions and limitations: The total appropriation in this section is provided solely for the Washington state institute for public policy to conduct a cost-benefit analysis for an exclusive or partial American steel requirement for future transportation contracts and subcontracts authorized in the transportation budget. This cost-benefit analysis must, to the extent feasible, (1) compare existing types and uses of steel to made in America steel alternatives including evaluation of quality, (2) examine benefits to Washington workers and the Washington economy, (3) examine lifecycle and embodied carbon greenhouse gas emissions, (4) identify requirements for purchasing American steel that minimize costs and maximize benefits, and (5) evaluate American steel requirements or preferences in other states. The Washington state institute for public policy may solicit input for the analysis from representatives of interested parties to include, but not be limited to, the construction and manufacturing sectors, organized labor in the construction and manufacturing sectors, cities, counties, American steel manufacturing companies, environmental advocacy organizations, and appropriate state agencies. A final report is due to the legislature by December 1, 2021.

NEW SECTION. Sec. 109. FOR THE BOARD OF PILOTAGE COMMISSIONERS

Pilotage Account—State	Appropriation
\$5,776,000	

The appropriation in this section is subject to the following conditions and limitations:

(1) \$2,926,000 of the pilotage account—state appropriation is provided solely for self-insurance liability premium expenditures; however, this

appropriation is contingent upon the board:

(a) Annually depositing the first one hundred fifty thousand dollars collected through Puget Sound pilotage district pilotage tariffs into the pilotage account; and

(b) Assessing a self-insurance premium surcharge of sixteen dollars per pilotage assignment on vessels requiring pilotage in the Puget Sound pilotage district.

(2) The board of pilotage commissioners shall file the annual report to the governor and chairs of the transportation committees required under RCW 88.16.035(1)(f) by September 1, 2019, and annually thereafter. The report must include the continuation of policies and procedures necessary to increase the diversity of pilots, trainees, and applicants, including a diversity action plan. The diversity action plan must articulate a comprehensive vision of the board's diversity goals and the steps it will take to reach those goals.

NEW SECTION. Sec. 110. FOR THE HOUSE OF REPRESENTATIVES

Motor	Vehicle	Account—State
Appropriation	\$3,210,000	

NEW SECTION. Sec. 111. FOR THE SENATE

Motor	Vehicle	Account—State
Appropriation	\$3,085,000	

NEW SECTION. Sec. 112. FOR THE DEPARTMENT OF FISH AND WILDLIFE

Motor	Vehicle	Account—State
Appropriation	\$400,000	

The appropriation in this section is subject to the following conditions and limitations: \$400,000 of the motor vehicle account—state appropriation is provided solely for the department, from amounts set aside out of statewide fuel taxes distributed to cities according to RCW 46.68.110(2), to contract with the association of Washington cities to inventory and assess fish passage barriers associated with city roads located in the *U.S. v. Washington* case area, water resource inventory area numbers one through 23. The study is a continuation of previous inventories, and must finalize a complete inventory of city-owned fish passage barriers in water resource inventory area numbers one through 23. The inventories and assessments must be conducted using the methods described in the department's

fish passage, inventory, assessment, and prioritization manual. A report of the study must be provided to the office of financial management and the transportation committees of the legislature by July 1, 2023.

NEW SECTION. Sec. 113. FOR THE DEPARTMENT OF ECOLOGY

(1) When distributing funds for litter control the department shall give priority to litter control along state highways.

(2) The department shall contract with the department of transportation to schedule litter prevention messaging and coordination of litter emphasis patrols with the Washington state patrol. The department of transportation may coordinate with the department to conduct litter pickup during scheduled maintenance closures as situations allow.

TRANSPORTATION AGENCIES—OPERATING

NEW SECTION. Sec. 201. FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION

Highway Safety Account—State
Appropriation \$4,601,000

Highway Safety Account—Federal
Appropriation \$27,198,000

Highway Safety Account—Private/Local
Appropriation \$60,000

School Zone Safety Account—State
Appropriation \$850,000

TOTAL APPROPRIATION \$32,709,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The Washington traffic safety commission may oversee a demonstration project in one county, coordinating with a public transportation benefit area (PTBA) and the department of transportation, to test the feasibility and accuracy of the use of automated enforcement technology for high occupancy vehicle (HOV) lane passenger compliance. All costs associated with the demonstration project must be borne by the participating public transportation benefit area. Any photograph, microphotograph, or electronic images of a driver or passengers are for the exclusive use of the PTBA in the determination of whether an HOV passenger violation has occurred to test the feasibility and accuracy of automated

enforcement under this subsection and are not open to the public and may not be used in a court in a pending action or proceeding. All photographs, microphotographs, and electronic images must be destroyed after determining a passenger count and no later than the completion of the demonstration project. No warnings or notices of infraction may be issued under the demonstration project.

For purposes of the demonstration project, an automated enforcement technology device may record an image of a driver and passenger of a motor vehicle. The county and PTBA must erect signs marking the locations where the automated enforcement for HOV passenger requirements is occurring.

The PTBA, in consultation with the Washington traffic safety commission, must provide a report to the transportation committees of the legislature with the number of violations detected during the demonstration project, whether the technology used was accurate and any recommendations for future use of automated enforcement technology for HOV lane enforcement by June 30, 2022.

(2) The Washington traffic safety commission shall coordinate with each city that implements a pilot program as authorized in RCW 46.63.170, chapter 224, Laws of 2020 to provide the transportation committees of the legislature with the following information by June 30, 2023:

(a) The number of warnings and infractions issued to first-time violators under the pilot program;

(b) The number of warnings and infractions issued to the registered owners of vehicles that are not registered with an address located in the city conducting the pilot program; and

(c) The frequency with which warnings and infractions are issued on weekdays versus weekend days.

(3) The Washington traffic safety commission may oversee a pilot program in up to three cities implementing the use of automated vehicle noise enforcement cameras in zones that have been designated by ordinance as "Stay Out of Areas of Racing."

(a) Any programs authorized by the commission must be authorized by December 31, 2022.

(b) If a city has established an authorized automated vehicle noise enforcement camera pilot program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based upon the value of the equipment and services provided or rendered in support of the system.

(c) Any city administering a pilot program overseen by the traffic safety commission shall use the following guidelines to administer the program:

(i) Automated vehicle noise enforcement camera may record photographs or audio of the vehicle and vehicle license plate only while a violation is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(ii) The law enforcement agency of the city or county government shall install two signs facing opposite directions within two hundred feet, or otherwise consistent with the uniform manual on traffic control devices, where the automated vehicle noise enforcement camera is used that state "Street Racing Noise Pilot Program in Progress";

(iii) Cities testing the use of automated vehicle noise enforcement cameras must post information on the city website and notify local media outlets indicating the zones in which the automated vehicle noise enforcement cameras will be used;

(iv) A city may only issue a warning notice with no penalty for a violation detected by automated vehicle noise enforcement cameras in a Stay Out of Areas of Racing zone. Warning notices must be mailed to the registered owner of a vehicle within fourteen days of the detected violation;

(v) A violation detected through the use of automated vehicle noise enforcement cameras is not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120;

(vi) Notwithstanding any other provision of law, all photographs, videos, microphotographs, audio recordings, or electronic images prepared under this section are for the exclusive use of law enforcement in the

discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding. No photograph, microphotograph, audio recording, or electronic image may be used for any purpose other than the issuance of warnings for violations under this section or retained longer than necessary to issue a warning notice as required under this subsection (3); and

(vii) By June 30, 2023, the participating cities shall provide a report to the commission and appropriate committees of the legislature regarding the use, public acceptance, outcomes, warnings issued, data retention and use, and other relevant issues regarding automated vehicle noise enforcement cameras demonstrated by the pilot projects.

NEW SECTION. Sec. 202. FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account—State
Appropriation \$1,134,000

Motor Vehicle Account—State
Appropriation \$7,743,000

County Arterial Preservation Account—
State

Appropriation \$1,669,000

TOTAL APPROPRIATION \$10,546,000

The appropriations in this section are subject to the following conditions and limitations: \$5,000,000 of the motor vehicle account—state appropriation is provided solely for deposit into the county road administration board emergency loan account—state account.

NEW SECTION. Sec. 203. FOR THE TRANSPORTATION IMPROVEMENT BOARD

Transportation Improvement Account—
State

Appropriation \$4,495,000

NEW SECTION. Sec. 204. FOR THE JOINT TRANSPORTATION COMMITTEE

Motor Vehicle Account—State
Appropriation \$2,660,000

Multimodal Transportation Account—
State Appropriation \$770,000

TOTAL APPROPRIATION \$3,430,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$220,000 of the multimodal transportation account—state appropriation is provided solely for overseeing a consultant study to provide recommendations related to the Washington state department of transportation's role in broadband service expansion efforts as directed in chapter . . . (Engrossed Substitute House Bill No. 1457), Laws of 2021 (broadband and highway rights-of-way). If chapter . . . (Engrossed Substitute House Bill No. 1457), Laws of 2021 (broadband and highway rights-of-way) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(2) \$250,000 of the motor vehicle account—state appropriation is provided solely for the joint transportation committee to convene a study on the impacts of current and historical city transportation investments on designated populations, including communities of color, low-income households, vulnerable populations, and displaced communities. The study must identify and measure the true costs of underinvestment of accessible transportation for designated populations, including the secondary impacts to public health, economic opportunity, educational access, and environmental risk factors. The assessment must include specific approaches to addressing existing inequities within cities, as well as recommendations to develop best practices to improve, diversify, and expand city transportation investments. A report must be provided to the office of financial management and the transportation committees of the legislature by December 20, 2022.

(3) \$400,000 of the motor vehicle account—state appropriation is provided for the development of a workforce plan for the Washington state ferries which addresses recruitment, retention, diversity, training needs, leadership development, succession planning and other elements needed to ensure sufficient and cost-effective crewing and staffing of the ferry system. In developing the scope of work for the plan and throughout plan development, the joint transportation committee must solicit input from representatives of the Washington state ferries division and the human resources division of the Washington state department of transportation. Represented employee groups must also be consulted as part of plan development. The plan must include

a roadmap for Washington state ferries to comprehensively address persistent staffing challenges and strategically position itself for its future workforce needs. The joint transportation committee must issue an interim report identifying short-term strategies to reduce reliance on overtime for staffing day-to-day ferry service. The interim report is due to the transportation committees of the legislature by January 1, 2022. The final report is due to the transportation committees of the legislature by December 20, 2022.

(4) \$250,000 of the motor vehicle account—state appropriation is provided for the joint transportation committee to examine best practices from other states for insuring highway facilities. The joint transportation committee shall report to the legislature on findings and include recommendations for best practices for Washington state by December 15, 2021.

(5) \$150,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to update the Washington State Short Line Rail Inventory and Needs Assessment, prepared in 2015, and to facilitate a stakeholder process to assess the effectiveness of state support for short line rail infrastructure based on current and future short line rail infrastructure needs. This assessment must include consideration of current state grant and loan programs, including state investment in nonstate owned short lines, the state's role and investments in the Palouse River and Coulee City (PCC) rail system, and any other ongoing state activities related to short line rail infrastructure. The joint transportation committee must solicit input from all regions of the state from representatives of: Short line rail infrastructure owners, short line rail operators, short line rail customers from representative industries, ports served by short line rail infrastructure, the Washington state department of transportation, the utilities and transportation commission, and other relevant stakeholders as identified by the joint transportation committee. A report with recommendations to enhance the state's support for short line rail infrastructure is due to the transportation committees of the legislature by January 1, 2022.

(6) (a) \$200,000 of the motor vehicle account—state appropriation is for the joint transportation committee to develop a truck parking action plan with recommendations for immediate next steps for near-term and lasting change in the availability of truck parking for short-haul and long-distance commercial vehicle drivers who require reasonable accommodations for parking commercial motor vehicles, obtaining adequate services, and complying with federal rest requirements. For each opportunity identified, the action plan must:

(i) Assess the magnitude of potential impact;

(ii) Assess the potential difficulty level of implementation; and

(iii) Explain barriers to success and specific steps required to overcome them.

(b) The action plan must focus on approaches that would be most impactful and feasible and may include, but not be limited to:

(i) Specific cooperative private sector and government actions;

(ii) Legal and regulatory frameworks at the state level to drive private and/or public-sector action;

(iii) Incentive-based government programs to spur private sector innovation and investment; and

(iv) Direct government action at the state, regional, and/or local level.

(c) The action plan must identify specific, promising projects and approaches, and provide a clear roadmap to what is needed to drive real, substantial improvements in truck parking.

(d) Outreach for action plan input, including on the feasibility of each opportunity evaluated, must include outreach to representatives of: The trucking industry; truck labor organizations; the shipping industry; truck stop owners; commercial freight delivery recipients, including warehouse and retail recipients; the association of Washington cities; the Washington state association of counties; the Washington state department of transportation; the Washington state patrol; and an academic or research institution that can provide input on technical components of the plan.

(e) A concise action plan with specific recommended next steps is due to the transportation committees of the legislature by January 1, 2022.

(7) \$400,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to evaluate options for providing connectivity in the Pacific Northwest region from Portland, Oregon to Vancouver, British Columbia in light of new trends impacting the transportation system to determine how updated forecasts of future highway volumes and changes to future transportation mobility needs impact earlier assessments of options for facilitating mobility in the region, including ultra high speed rail. The assessment must consider and update relevant information provided in past Washington state department of transportation long range plans for the Cascades corridor. A comparative assessment of the potential benefits and costs of each option evaluated must be included. A report is due to the legislature by December 1, 2022.

NEW SECTION. Sec. 205. FOR THE TRANSPORTATION COMMISSION

Motor Vehicle Account—State Appropriation	\$2,332,000
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Interstate 405 and state Route Number 167 Express Toll Lanes

Account—State	Appropriation
\$127,000	

State Route Number 520 Corridor Account—State	
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Appropriation	\$276,000
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Tacoma Narrows Toll Bridge Account—State	
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Appropriation	\$180,000
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Alaskan Way Viaduct Replacement Project	
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Account—State	Appropriation
\$172,000	

TOTAL APPROPRIATION	\$3,087,000
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The appropriations in this section are subject to the following conditions and limitations:

(1) \$127,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$276,000 of the state route number 520 corridor

account—state appropriation, \$180,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$172,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the transportation commission's proportional share of time spent supporting tolling operations for the respective tolling facilities.

(2) The commission shall identify and measure how a road usage charge could be adjusted so that vehicles of comparable efficiency pay the same rate regardless of their means of propulsion and examine options for indexing to stabilize revenue as vehicle fleets become more efficient over time.

NEW SECTION. Sec. 206. FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

Freight Mobility Investment Account—State
 Appropriation \$831,000

NEW SECTION. Sec. 207. FOR THE WASHINGTON STATE PATROL

State Patrol Highway Account—State
 Appropriation \$523,697,000

State Patrol Highway Account—Federal
 Appropriation \$16,157,000

State Patrol Highway Account—Private/Local
 Appropriation \$4,261,000

Highway Safety Account—State
 Appropriation \$1,224,000

Ignition Interlock Device Revolving Account—State
 Appropriation \$5,053,000

Multimodal Transportation Account—State
 Appropriation \$288,000

Interstate 405 and State Route Number 167 Express

Toll Lanes Account—State
 Appropriation \$1,348,000

State Route Number 520 Corridor Account—State
 Appropriation \$433,000

Tacoma Narrows Toll Bridge Account—State
 Appropriation \$77,000

TOTAL APPROPRIATION \$552,538,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol must be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol.

(2) \$510,000 of the ignition interlock device revolving account—state appropriation is provided solely for the ignition interlock program at the Washington state patrol to provide funding for two staff to work and provide support for the program in working with manufacturers, service centers, technicians, and participants in the program.

(3) \$16,099,000 of the state patrol highway account—state appropriation is provided solely for the land mobile radio system replacement, upgrade, and other related activities. Beginning January 1, 2022, the Washington state patrol must report semiannually to the office of the state chief information officer on the progress related to the projects and activities associated with the land mobile radio system, including the governance structure, outcomes achieved in the prior six-month time period, and how the activities are being managed holistically as recommended by the office of the chief information officer. At the time of submittal to the office of the state chief information officer, this report shall be transmitted to the office of financial management and the house and senate transportation committees.

(4) \$493,000 of the state patrol highway account—state appropriation is provided solely for aerial criminal investigation tools, including software licensing and maintenance, and annual certification, and is subject to the conditions, limitations, and review requirements of section 701 of this act.

(5) \$786,000 of the state patrol highway account—state appropriation is provided solely for one-time costs associated with establishing the second

toxicology laboratory and addressing the backlog of toxicology cases from impaired driving and death investigations.

(6) \$580,000 of the state patrol highway account—state appropriation is provided solely for the operation of and administrative support to the license investigation unit to enforce vehicle registration laws in southwestern Washington. The Washington state patrol, in consultation with the department of revenue, shall maintain a running estimate of the additional vehicle registration fees, sales and use taxes, and local vehicle fees remitted to the state pursuant to activity conducted by the license investigation unit. Beginning October 1, 2021, and quarterly thereafter, the Washington state patrol shall submit a report detailing the additional revenue amounts generated since January 1, 2021, to the director of the office of financial management and the transportation committees of the legislature. At the end of the calendar quarter in which it is estimated that more than \$625,000 in state sales and use taxes have been remitted to the state since January 1, 2021, the Washington state patrol shall notify the state treasurer and the state treasurer shall transfer funds pursuant to section 406(18) of this act.

(7) The Washington state patrol and the office of financial management must be consulted by the department of transportation during the design phase of any improvement or preservation project that could impact Washington state patrol weigh station operations. During the design phase of any such project, the department of transportation must estimate the cost of designing around the affected weigh station's current operations, as well as the cost of moving the affected weigh station.

(8) \$4,180,000 of the state patrol highway account—state appropriation is provided solely for an additional arming and trooper basic training class. The cadet class is expected to graduate in June 2023.

(9) By December 1st of each year during the 2021–2023 biennium, the Washington state patrol must report to the house and senate transportation committees on the status of recruitment and retention activities as follows:

(a) A summary of recruitment and retention strategies;

(b) The number of transportation funded staff vacancies by major category;

(c) The number of applicants for each of the positions by these categories;

(d) The composition of workforce; and

(e) Other relevant outcome measures with comparative information with recent comparable months in prior years.

(10) \$1,348,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$433,000 of the state route number 520 corridor account—state appropriation, and \$77,000 of the Tacoma Narrows toll bridge account—state appropriation are provided solely for the Washington state patrol's proportional share of time spent supporting tolling operations and enforcement for the respective tolling facilities.

(11) \$289,000 of the state patrol highway account—state appropriation is provided solely for the replacement of 911 workstations.

(12) \$35,000 of the state patrol highway account—state appropriation is provided solely for the replacement of bomb response equipment.

(13) \$713,000 of the state patrol highway account—state appropriation is provided solely for information technology infrastructure maintenance.

(14) The Washington state patrol must provide a report to the office of financial management and the house and senate transportation committees on its plan for implementing a transition to cloud computing and storage with its 2023–2025 budget submittal.

(15) \$945,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter . . . (Substitute House Bill No. 1223), Laws of 2021 (custodial interrogations). If chapter . . . (Substitute House Bill No. 1223), Laws of 2021 (custodial interrogations) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(16) \$92,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter . . . (Engrossed Substitute House Bill No. 1054), Laws of 2021 (peace officer tactics). If chapter . . . (Engrossed Substitute House Bill No. 1054), Laws of 2021 (peace officer

tactics) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(17) \$92,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter . . . (Second Substitute House Bill No. 1310), Laws of 2021 (use of force by officers). If chapter . . . (Second Substitute House Bill No. 1310), Laws of 2021 (use of force by officers) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(18) (a) The Washington state patrol is directed to terminate its "Agreement for Utility Connection and Reimbursement of Water Extension Expenses" with the city of Shelton, executed on June 12, 2017, subject to the city of Shelton's consent to terminate the agreement. The legislature finds that the water connection extension constructed by the Washington state patrol from the city of Shelton's water facilities to the Washington state patrol academy was necessary to meet the water supply needs of the academy. The legislature also finds that the water connection provides an ongoing water supply that is necessary to the operation of the training facility, that the state is making use of the water connection for these public activities, and that any future incidental use of the municipal infrastructure put in place to support these activities will not impede the Washington state patrol's ongoing use of the water connection extension.

(b) \$2,220,000 of the transfer from the waste tire removal account—state appropriation to the motor vehicle account—state appropriation in this act, as required under RCW 70A.205.425, reimburses the motor vehicle account—state appropriation for the portion of the water project costs assigned by the agreement to properties, other than the Washington state patrol academy, that make use of the water connection while the agreement remains in effect. This reimbursement to the motor vehicle fund is intended to address any possibility that the termination of this agreement could be determined to result in the unconstitutional use of 18th amendment designated funds for nonhighway purposes under the constitution of the state of Washington; however, this transfer is not intended to indicate that the incidental use of this infrastructure by these

properties necessarily requires such reimbursement under the state Constitution.

NEW SECTION. Sec. 208. FOR THE DEPARTMENT OF LICENSING

Marine Fuel Tax Refund Account—State
Appropriation \$34,000

Motorcycle Safety Education Account—
State
Appropriation \$4,928,000

Highway Safety Account—State
Appropriation \$242,488,000

Highway Safety Account—Federal
Appropriation \$1,294,000

Motor Vehicle Account—State
Appropriation \$79,421,000

Motor Vehicle Account—Federal
Appropriation \$150,000

Ignition Interlock Device Revolving
Account—State
Appropriation \$4,099,000

Department of Licensing Services
Account—State
Appropriation \$8,189,000

License Plate Technology Account—
State
Appropriation \$4,250,000

Abandoned Recreational Vehicle
Account—State
Appropriation \$3,074,000

Limousine Carriers Account—State
Appropriation \$110,000

Electric Vehicle Account—State
Appropriation \$417,000

DOL Technology Improvement & Data
Management
Account—State Appropriation
\$816,000

Agency Financial Transaction Account—
State
Appropriation \$21,257,000

Limited Fish and Wildlife Account—
State Appropriation \$916,000

TOTAL APPROPRIATION \$371,443,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$12,000 of the motorcycle safety education account—state appropriation, \$2,000 of the limited fish and wildlife account—state appropriation, \$728,000 of the highway safety account—state appropriation, \$238,000 of the motor vehicle account—state appropriation, \$10,000 of the ignition interlock device revolving account—state appropriation, and \$10,000 of the department of licensing services account—state appropriation are provided solely for the department to redesign and improve its online services and website, and are subject to the conditions, limitations, and review requirements of section 701 of this act.

(2) \$28,636,000 of the highway safety account—state appropriation is provided solely for costs necessary to accommodate increased demand for enhanced drivers' licenses and enhanced identicards. The department shall report on a quarterly basis on the use of these funds, associated workload, and information with comparative information with recent comparable months in prior years. The report must include detailed statewide and by licensing service office information on staffing levels, average monthly wait times, the number of enhanced drivers' licenses and enhanced identicards issued/renewed, and the number of primary drivers' licenses and identicards issued/renewed. Within the amounts provided in this subsection, the department shall implement efficiency measures to reduce the time for licensing transactions and wait times including, but not limited to, the installation of additional cameras at licensing service offices that reduce bottlenecks and align with the "keep your customer" initiative.

(3)(a) The department must implement cost recovery mechanisms to recoup at least a portion of credit card and other financial transaction costs as part of charges imposed for driver and vehicle fee transactions. The department must develop a method of tracking the amount of credit card and other financial cost-recovery revenues. The department must notify the state treasurer of these amounts and the state treasurer must deposit these revenues in the agency financial transaction account on a quarterly basis. If chapter . . . (House Bill No. 1115), Laws of 2021 (cost recovery of state agency credit card and transaction fees) is enacted by June 30, 2021, this subsection (3)(a) lapses.

(b) The appropriations in this section assume implementation by the department of cost recovery mechanisms to recoup at least \$21,257,000 during the 2021-2023 biennium in credit card and other financial transaction costs as part of charges imposed for driver and vehicle fee transactions. During the 2021-2023 fiscal biennium, the department must report any amounts recovered to the office of financial management and appropriate committees of the legislature on a quarterly basis.

(4) \$3,074,000 of the abandoned recreational vehicle disposal account—state appropriation is provided solely for providing reimbursements in accordance with the department's abandoned recreational vehicle disposal reimbursement program. It is the intent of the legislature that the department prioritize this funding for allowable and approved reimbursements and not to build a reserve of funds within the account. During the 2021-2023 fiscal biennium, the department must report any amounts recovered to the office of financial management and appropriate committees of the legislature on a quarterly basis.

(5) \$1,550,000 of the highway safety account—state appropriation is provided solely for the department to provide an interagency transfer to the department of social and health services, children's administration division for the purpose of providing driver's license support to a larger population of foster youth than is already served within existing resources. Support services include reimbursement of driver's license issuance costs, fees for driver training education, and motor vehicle liability insurance costs.

(6) \$500,000 of the highway safety account—state appropriation is provided solely for communication and outreach activities necessary to inform the public of federally acceptable identification options including, but not limited to, enhanced drivers' licenses and enhanced identicards. The department shall continue the outreach plan that includes informational material that can be effectively communicated to all communities and populations in Washington. To accomplish this work, the department shall contract with an external vendor with demonstrated experience and expertise in outreach and marketing to underrepresented

communities in a culturally responsive fashion.

(7) \$23,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute House Bill No. 1078), Laws of 2021 (restoring voter eligibility after felony conviction). If chapter . . . (Engrossed Substitute House Bill No. 1078), Laws of 2021 (restoring voter eligibility after felony conviction) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(8) \$523,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1207), Laws of 2021 (department of licensing issued documents). If chapter . . . (Substitute House Bill No. 1207), Laws of 2021 (department of licensing issued documents) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(9) \$57,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1322), Laws of 2021 (off-road vehicle enforcement). If chapter . . . (Substitute House Bill No. 1322), Laws of 2021 (off-road vehicle enforcement) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(10) (a) \$54,000 of the motor vehicle account—state appropriation is provided solely for the issuance of nonemergency medical transportation vehicle decals to implement the high occupancy vehicle lane access pilot program established elsewhere in this act. A for hire nonemergency medical transportation vehicle is a vehicle that is a "for hire vehicle" under RCW 46.04.190 that provides nonemergency medical transportation, including for life-sustaining transportation purposes, to meet the medical transportation needs of individuals traveling to medical practices and clinics, cancer centers, dialysis facilities, hospitals, and other care providers.

(b) As part of this pilot program, the owner of a for hire nonemergency medical transportation vehicle may apply to the department, county auditor or other agent, or subagent appointed by the director, for a high occupancy vehicle exempt decal for a for hire nonemergency

medical transportation vehicle. The high occupancy vehicle exempt decal allows the for hire nonemergency medical transportation vehicle to use a high occupancy vehicle lane as specified in RCW 46.61.165 and 47.52.025 during the 2021–2023 fiscal biennium.

(c) For the exemption in this subsection to apply to a for hire nonemergency medical transportation vehicle, the decal:

(i) Must be displayed on the vehicle so that it is clearly visible from outside the vehicle;

(ii) Must identify that the vehicle is exempt from the high occupancy vehicle requirements; and

(iii) Must be visible from the rear of the vehicle.

(d) The owner of a for hire nonemergency medical transportation vehicle or the owner's representative must apply for a high occupancy vehicle exempt decal on a form provided or approved by the department. The application must include:

(i) The name and address of the person who is the owner of the vehicle;

(ii) A full description of the vehicle, including its make, model, year, and the vehicle identification number;

(iii) The purpose for which the vehicle is principally used;

(iv) An attestation signed by the vehicle's owner or the owner's representative that the vehicle's owner has a minimum of one contract or service agreement to provide for hire transportation services for medical purposes with one or more of the following entities: A health insurance company; a hospital, clinic, dialysis center, or other medical institution; a day care center, retirement home, or group home; a federal, state, or local agency or jurisdiction; or a broker who negotiates these services on behalf of one or more of these entities; and

(v) Other information as required by the department upon application.

(e) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required under (f) of this subsection when issuing a high occupancy vehicle exempt decal.

(f) The department, county auditor or other agent, or subagent, is required to collect a \$5 fee when issuing a decal under this subsection, in addition to any other fees and taxes required by law.

(g) A high occupancy vehicle exempt decal may not be renewed and expires upon the termination of the pilot program established elsewhere in this act. The status as an exempt vehicle continues until suspended or revoked for misuse, or when the vehicle is no longer used as a for hire nonemergency medical transportation vehicle, or when the pilot program established elsewhere in this act is terminated.

(h) The department may adopt rules to implement this subsection.

(11) The department must place personal and company data elements in separate data fields to allow the department to select discrete data elements when providing information or data to persons or entities outside the department. Pursuant to the restrictions in federal and state law, a person's photo, social security number, or medical information must not be made available through public disclosure or data being provided under RCW 46.12.630 or 46.12.635.

(12) The department must work with any regional transit authority pursuant to RCW 82.44.135 to determine cost allocations that are based on actual costs and that would result in full cost recovery for administration and collection of the taxes. The department must report actual cost allocations to the transportation committees of the legislature by January 1, 2022.

NEW SECTION. Sec. 209. FOR THE DEPARTMENT OF TRANSPORTATION—TOLL OPERATIONS AND MAINTENANCE—PROGRAM B

State Route Number 520 Corridor Account—State

Appropriation \$53,747,000

State Route Number 520 Civil Penalties Account—State

Appropriation \$4,150,000

Tacoma Narrows Toll Bridge Account—State

Appropriation \$29,809,000

Alaskan Way Viaduct Replacement Project Account—State

Appropriation \$20,933,000

Interstate 405 and State Route Number 167 Express

Toll Lanes Account—State
Appropriation \$23,984,000

TOTAL APPROPRIATION \$132,623,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,300,000 of the Tacoma Narrows toll bridge account—state appropriation and \$12,483,846 of the state route number 520 corridor account—state appropriation are provided solely for the purposes of addressing unforeseen operations and maintenance costs on the Tacoma Narrows bridge and the state route number 520 bridge, respectively. The office of financial management shall place the amounts provided in this subsection, which represent a portion of the required minimum fund balance under the policy of the state treasurer, in unallotted status. The office may release the funds only when it determines that all other funds designated for operations and maintenance purposes have been exhausted.

(2) As long as the facility is tolled, the department must provide semiannual reports to the transportation committees of the legislature on the Interstate 405 express toll lane project performance measures listed in RCW 47.56.880(4). These reports must include:

(a) Information on the travel times and travel time reliability (at a minimum, average and 90th percentile travel times) maintained during peak and nonpeak periods in the express toll lanes and general purpose lanes for both the entire corridor and commonly made trips in the corridor including, but not limited to, northbound from Bellevue to Rose Hill, state route number 520 at NE 148th to Interstate 405 at state route number 522, Bellevue to Bothell (both NE 8th to state route number 522 and NE 8th to state route number 527), and a trip internal to the corridor (such as NE 85th to NE 160th) and similar southbound trips;

(b) A month-to-month comparison of travel times and travel time reliability for the entire corridor and commonly made trips in the corridor as specified in (a) of this subsection since implementation of the express toll lanes and, to the

extent available, a comparison to the travel times and travel time reliability prior to implementation of the express toll lanes;

(c) Total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane (i) compared to total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane, on this segment of Interstate 405 prior to implementation of the express toll lanes and (ii) compared to total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane, from month to month since implementation of the express toll lanes; and

(d) Underlying congestion measurements, that is, speeds, that are being used to generate the summary graphs provided, to be made available in a digital file format.

(3) The department shall make detailed semiannual reports to the transportation committees of the legislature and the public on the department's website on the following:

(a) The use of consultants in the tolling program, including the name of the contractor, the scope of work, the type of contract, timelines, deliverables, any new task orders, and any extensions to existing consultant contracts;

(b) The nonvendor costs of administering toll operations, including the costs of staffing the division, consultants, and other personal service contracts required for technical oversight and management assistance, insurance, payments related to credit card processing, transponder purchases and inventory management, facility operations and maintenance, and other miscellaneous nonvendor costs;

(c) The vendor-related costs of operating tolled facilities, including the costs of the customer service center, cash collections on the Tacoma Narrows bridge, electronic payment processing, and toll collection equipment maintenance, renewal, and replacement;

(d) The toll adjudication process, including a summary table for each toll facility that includes:

(i) The number of notices of civil penalty issued;

(ii) The number of recipients who pay before the notice becomes a penalty;

(iii) The number of recipients who request a hearing and the number who do not respond;

(iv) Workload costs related to hearings;

(v) The cost and effectiveness of debt collection activities; and

(vi) Revenues generated from notices of civil penalty; and

(e) A summary of toll revenue by facility on all operating toll facilities and express toll lane systems, and an itemized depiction of the use of that revenue.

(4) During the 2021-2023 fiscal biennium, the department plans to issue a request for proposals as the first stage of a competitive procurement process that will replace the toll equipment and select a new tolling operator for the Tacoma Narrows Bridge. The request for proposals and subsequent competitive procurement must incorporate elements that prioritize the overall goal of lowering costs per transaction for the facility, such as incentives for innovative approaches which result in lower transactional costs, requests for efficiencies on the part of the bidder that lower operational costs, and incorporation of technologies such as self-serve credit card machines or other point-of-payment technologies that lower costs or improve operational efficiencies.

(5) \$20,001,000 of the Alaskan Way viaduct replacement project account—state appropriation is provided solely for the new state route number 99 tunnel toll facility's expected share of collecting toll revenues, operating customer services, and maintaining toll collection systems. The legislature expects to see appropriate reductions to the other toll facility accounts once tolling on the new state route number 99 tunnel toll facility stabilizes and any previously incurred costs for start-up of the new facility are charged back to the Alaskan Way viaduct replacement project account. The office of financial management shall closely monitor the application of the cost allocation model and ensure that the new state route

number 99 tunnel toll facility is adequately sharing costs and the other toll facility accounts are not being overspent or subsidizing the new state route number 99 tunnel toll facility.

(6) (a) \$1,651,000 of the state route number 520 corridor account—state appropriation, \$709,000 of the Tacoma Narrows toll bridge account—state appropriation, \$932,000 of the Alaskan Way viaduct replacement project account—state appropriation, and \$708,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation are provided solely for the reappropriation of unspent funds on the new tolling back office system from the 2019-2021 biennium, and are subject to the conditions, limitations, and review provided in section 701 of this act.

(b) The department shall continue to work with the office of financial management, office of the chief information officer, and the transportation committees of the legislature on the project management plan that includes a provision for independent verification and validation of contract deliverables from the successful bidder and a provision for quality assurance that includes reporting independently to the office of the chief information officer on an ongoing basis during system implementation.

(c) The office of financial management shall place the amounts provided in this subsection in unallotted status until the department submits a detailed progress report on the progress of the new tolling back office system. The director of the office of financial management or their designee shall consult with the chairs and ranking members of the transportation committees of the legislature prior to making a decision to allot these funds.

(7) Out of funding appropriated in this section, the department shall contract with the state auditor's office for a performance audit of the department's project to replace its electronic toll collection system. The audit should include an evaluation of the department's project planning, vendor procurement, contract management and project oversight. The final report is to be issued by December 31, 2022. The state auditor will transmit copies of the report to the jurisdictional committees of the legislature and the department.

(8) \$1,516,000 of the state route number 520 corridor account—state appropriation is provided solely for the increased costs of insurance for the state route number 520 floating bridge. The department shall conduct an evaluation of the short and long-term costs and benefits including risk mitigation of self-insurance as compared to the commercial insurance option for the state route number 520 floating bridge, as allowed under the terms of the state route number 520 master bond resolution. By December 15, 2021, the department shall report to the legislature on the results of this evaluation.

(9) As part of the department's 2023-2025 biennial budget request, the department shall update the cost allocation recommendations that assign appropriate costs to each of the toll funds for services provided by relevant Washington state department of transportation programs, the Washington state patrol, and the transportation commission. The recommendations shall be based on updated traffic and toll transaction patterns and other relevant factors.

NEW SECTION. Sec. 210. FOR THE DEPARTMENT OF TRANSPORTATION—INFORMATION TECHNOLOGY—PROGRAM C

Transportation Partnership Account—
State Appropriation \$1,437,000

Motor Vehicle Account—State
Appropriation \$102,671,000

Puget Sound Ferry Operations Account—
State
Appropriation \$263,000

Multimodal Transportation Account—
State
Appropriation \$2,831,000

Transportation 2003 Account (Nickel
Account)—State
Appropriation \$1,441,000

TOTAL APPROPRIATION \$108,643,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$8,546,000 of the motor vehicle account—state appropriation is provided solely for the department's cost related to the one Washington project, and is subject to the conditions, limitations,

and review requirements of section 701 of this act.

(2) The capital systems replacement or modernization project is subject to the conditions, limitations, and review requirements of section 701 of this act.

NEW SECTION. Sec. 211. FOR THE DEPARTMENT OF TRANSPORTATION—FACILITY MAINTENANCE, OPERATIONS, AND CONSTRUCTION—PROGRAM D—OPERATING

Motor	Vehicle	Account—State	
Appropriation	\$35,771,000		
State Route	Number	520	Corridor
Account—State			
Appropriation	\$34,000		
TOTAL APPROPRIATION	\$35,805,000		

NEW SECTION. Sec. 212. FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F

Aeronautics	Account—State
Appropriation	\$8,480,000
Aeronautics	Account—Federal
Appropriation	\$3,916,000
Aeronautics	Account—Private/Local
Appropriation	\$60,000
TOTAL APPROPRIATION	\$12,456,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,888,000 of the aeronautics account—state appropriation is provided solely for the airport aid grant program, which provides competitive grants to public use airports for pavement, safety, maintenance, planning, and security.

(2) \$505,000 of the aeronautics account—state appropriation is provided solely for the implementation of chapter . . . (House Bill No. 1198), Laws of 2021 (aviation coordinating commission). If chapter . . . (House Bill No. 1198), Laws of 2021 is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(3) \$280,000 of the aeronautics account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1379), Laws of 2021 (unpiloted aircraft system state coordinator). If chapter . . . (Substitute House Bill No. 1379), Laws of 2021 (unpiloted aircraft system state coordinator) is not enacted by June 30,

2021, the amount provided in this subsection lapses.

NEW SECTION. Sec. 213. FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM DELIVERY MANAGEMENT AND SUPPORT—PROGRAM H

Motor	Vehicle	Account—State
Appropriation	\$60,273,000	
Motor	Vehicle	Account—Federal
Appropriation	\$500,000	
Multimodal	Transportation	Account—
State Appropriation	\$258,000	
TOTAL APPROPRIATION	\$61,031,000	

The appropriations in this section are subject to the following conditions and limitations:

(1) The legislature recognizes that the trail known as the Rocky Reach Trail, and its extensions, serve to separate motor vehicle traffic from pedestrians and bicyclists, increasing motor vehicle safety on state route number 2 and the coincident section of state route number 97. Consistent with chapter 47.30 RCW and pursuant to RCW 47.12.080, the legislature declares that transferring portions of WSDOT Inventory Control (IC) No. 2-09-04686 containing the trail and associated buffer areas to the Washington state parks and recreation commission is consistent with the public interest. The legislature directs the department to transfer the property to the Washington state parks and recreation commission.

(a) The department must be paid fair market value for any portions of the transferred real property that is later abandoned, vacated, or ceases to be publicly maintained for trail purposes.

(b) Prior to completing the transfer in this subsection (1), the department must ensure that provisions are made to accommodate private and public utilities and any facilities that predate the department's acquisition of the property, at no cost to those entities. Prior to completing the transfer, the department shall also ensure that provisions, by fair market assessment, are made to accommodate other private and public utilities and any facilities that have been legally allowed by permit or other instrument.

(c) The department may sell any adjoining property that is not necessary to support the Rocky Reach Trail and adjacent buffer areas only after the

transfer of trail-related property to the Washington state parks and recreation commission is complete. Adjoining property owners must be given the first opportunity to acquire such property that abuts their property, and applicable boundary line or other adjustments must be made to the legal descriptions for recording purposes.

(2) With respect to Parcel 12 of the real property conveyed by the state of Washington to the city of Mercer Island under that certain quitclaim deed, dated April 19, 2000, recorded in King county under recording no. 20000425001234, the requirement in the deed that the property be used for road/street purposes only will be deemed satisfied by the department of transportation so long as commuter parking, as part of the vertical development of the property, is one of the significant uses of the property.

(3) During the 2021-2023 biennium, if the department takes possession of the property situated in the City of Edmonds for which a purchase agreement was executed between Unocal and the department in 2005 (Tax Parcel Number 262703-2-003-0009), and if the department confirms that the property is still no longer needed for transportation purposes, the department shall provide the City of Edmonds with the right of first purchase in accordance with RCW 47.12.063(3) for the city's intended use of the property to rehabilitate near-shore habitat for salmon and related species.

(4) The department shall report to the transportation committees of the legislature by December 1, 2021, on the status of its efforts to consolidate franchises for broadband facilities across the state, including plans for increasing the number of consolidated franchises in the future.

NEW SECTION. Sec. 214. FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC-PRIVATE PARTNERSHIPS—PROGRAM K

Motor Vehicle	Account—State
Appropriation	\$675,000

Electric Vehicle	Account—State
Appropriation	\$3,900,000

Multimodal Transportation	Account—
State Appropriation	\$12,533,000

TOTAL APPROPRIATION	\$17,108,000
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The appropriations in this section are subject to the following conditions and limitations:

(1) The public private partnerships program must continue to explore retail partnerships at state-owned park and ride facilities, as authorized in RCW 47.04.295.

(2) \$2,400,000 of the multimodal transportation account—state appropriation is provided solely for the pilot program established under RCW 47.04.355, to provide clean alternative fuel vehicle use opportunities to underserved communities and low to moderate income members of the workforce not readily served by transit or located in transportation corridors with emissions that exceed federal or state emissions standards.

(3) (a) (i) \$133,000 of the multimodal transportation account—state appropriation is provided solely for the purpose of conducting an assessment of options for the development, including potential features and costs, for a publicly available mapping and forecasting tool that provides locations and essential information of charging and refueling infrastructure to support forecasted levels of electric vehicle adoption, travel, and usage across Washington state as described in chapter . . . (Engrossed Substitute House Bill No. 1287), Laws of 2021 (preparedness for a zero emissions transportation future).

(ii) The assessment must include a review of existing infrastructure needs assessments, mapping and forecasting tools, environmental health disparity resources, and related modeling. It must be performed in consultation with the department of ecology, department of commerce, and office of equity, and include a stakeholder process to address community, public agency, and relevant public and private utility needs to determine the resources needed to facilitate statewide and local transportation electrification efforts to drive emission reductions consistent with RCW 70A.45.020.

(iii) A report summarizing the findings of the assessment and the options recommended by the department for the tool's development is due to the transportation committees of the legislature by December 31, 2021.

(b) \$10,000,000 of the multimodal transportation account—state appropriation is provided solely for a clean alternative fuel vehicle infrastructure grant program for clean alternative fuel vehicle charging and refueling infrastructure that will provide public benefits for the state's network of charging infrastructure to facilitate state zero emission vehicle requirements under RCW 70A.30.010 and greenhouse gas emission reduction goals under RCW 70A.45.020. The department must develop a strategy for grant award selection based on maximizing public benefits by: Facilitating residents' and businesses' ability to purchase and lease clean alternative fuel vehicles through increased access to public electric vehicle charging and refueling, facilitating a decline in vehicle emissions that would otherwise contribute to pollution and greenhouse gas emissions, and increasing equity of access to clean alternative fuel vehicles. The department shall use proposed grant matching funds as a criterion for selecting grant award recipients. When the publicly available mapping and forecasting tool in (a) of this subsection has been developed and is available to be used for this purpose, strategy development for grant award selection must include analysis of the information provided by the tool.

NEW SECTION. Sec. 215. FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M

Motor Vehicle Account—State
Appropriation \$505,498,000

Motor Vehicle Account—Federal
Appropriation \$7,000,000

State Route Number 520 Corridor
Account—State
Appropriation \$4,222,000

Tacoma Narrows Toll Bridge Account—
State
Appropriation \$1,529,000

Alaskan Way Viaduct Replacement
Project
Account—State Appropriation
\$8,443,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation \$2,573,000

TOTAL APPROPRIATION \$529,265,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$7,529,000 of the motor vehicle account—state appropriation is provided solely for utility fees assessed by local governments as authorized under RCW 90.03.525 for the mitigation of stormwater runoff from state highways. Plan and reporting requirements as required in chapter 435, Laws of 2019 (Local Stormwater Charges) shall be consistent with the January 2012 findings of the Joint Transportation Committee Report for Effective Cost Recovery Structure for WSDOT, Jurisdictions, and Efficiencies in Stormwater Management.

(2) \$5,000,000 of the motor vehicle account—state appropriation is provided solely for a contingency pool for snow and ice removal. The department must notify the office of financial management and the transportation committees of the legislature when they have spent the base budget for snow and ice removal and will begin using the contingency pool funding.

(3) \$1,025,000 of the motor vehicle account—state appropriation is provided solely for the department to implement safety improvements and debris clean up on department-owned rights-of-way in the city of Seattle at levels above that being implemented as of January 1, 2019. The department must contract out or hire a crew dedicated solely to collecting and disposing of garbage, clearing debris or hazardous material, and implementing safety improvements where hazards exist to the traveling public, department employees, or people encamped upon department-owned rights-of-way. The department may request assistance from the Washington state patrol as necessary in order for both agencies to provide enhanced safety-related activities regarding the emergency hazards along state highway rights-of-way in the Seattle area.

(4) \$1,015,000 of the motor vehicle account—state appropriation is provided solely for a partnership program between the department and the city of Tacoma. The program shall address the safety and public health problems created by homeless encampments on the department's property along state highways within the city limits. \$570,000 is for dedicated department maintenance staff and associated clean-up costs. The

department and the city of Tacoma shall enter into a reimbursable agreement to cover up to \$445,000 of the city's expenses for clean-up crews and landfill costs.

(5) The department must continue a pilot program for the 2021-2023 fiscal biennium at the four highest demand safety rest areas to create and maintain an online calendar for volunteer groups to check availability of weekends for the free coffee program. The calendar must be updated at least weekly and show dates and times that are, or are not, available to participate in the free coffee program. The department must submit a report to the legislature on the ongoing pilot by December 1, 2022, outlining the costs and benefits of the online calendar pilot, and including surveys from the volunteer groups and agency staff to determine its effectiveness.

(6) \$686,000 of the motor vehicle account—state appropriation is provided solely for reimbursing the Oregon department of transportation (ODOT) for the department's share of increased maintenance costs of six highway bridges over the Columbia River that are maintained by ODOT.

(7) \$4,145,000 of the motor vehicle account—state appropriation is provided solely for increased costs of highway maintenance materials.

(8) \$5,816,000 of the motor vehicle account—state appropriation is provided solely for a contingency pool for repairing damages to highways caused by known and unknown third parties. The department must notify the office of financial management and the transportation committees of the legislature when they have spent the base budget for third-party damage repair and will begin using the contingency pool funding.

(9) \$5,000,000 of the motor vehicle account—state appropriation is provided solely for the department to address the risks to safety and public health associated with homeless encampments on department owned rights-of-way. The department must coordinate and work with local government officials and social service organizations to provide services and direct people to housing alternatives that are not in highway rights-of-way to help prevent future encampments from forming on highway rights of way. The department may hire

crews specializing in collecting and disposing of garbage, clearing debris or hazardous material, and implementing safety improvements where hazards exist. The department may request assistance from the Washington state patrol as necessary to provide enhanced safety-related activities along state highway rights-of-way.

(10) \$623,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1355), Laws of 2021 (noxious weeds). If chapter . . . (Substitute House Bill No. 1355), Laws of 2021 (noxious weeds) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

NEW SECTION. Sec. 216. FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—OPERATING

Motor Vehicle Account—State	Appropriation	\$76,142,000	
Motor Vehicle Account—Federal	Appropriation	\$2,050,000	
Motor Vehicle Account—Private/Local	Appropriation	\$250,000	
State Route Number 520 Corridor	Account—State	Appropriation	\$224,000
Tacoma Narrows Toll Bridge	Account—State	Appropriation	\$40,000
Alaskan Way Viaduct Replacement	Project Account—	State Appropriation	\$1,112,000
Interstate 405 and State Route Number 167 Express	Toll Lanes	Account—State	Appropriation \$20,000
TOTAL APPROPRIATION		\$79,838,000	

The appropriations in this section are subject to the following conditions and limitations:

(1) \$6,000,000 of the motor vehicle account—state appropriation is provided solely for low-cost enhancements. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. By December 15th of each odd-numbered year, the department shall provide a report to the legislature listing all low-cost

enhancement projects completed in the prior fiscal biennium.

(2)(a) During the 2021-2023 fiscal biennium, the department shall continue a pilot program that expands private transportation providers' access to high occupancy vehicle lanes. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, the following vehicles must be authorized to use the reserved portion of the highway if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles. For purposes of this subsection, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees. Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure.

(b) The department shall expand the high occupancy vehicle lane access pilot program to vehicles that deliver or collect blood, tissue, or blood components for a blood-collecting or distributing establishment regulated under chapter 70.335 RCW. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, blood-collecting or distributing establishment vehicles that are clearly and identifiably marked as such on all sides of the vehicle are considered emergency vehicles and must be authorized to use the reserved portion of the highway.

(c) The department shall expand the high occupancy vehicle lane access pilot program to organ transport vehicles transporting a time urgent organ for an organ procurement organization as defined in RCW 68.64.010. Under the pilot program, when the department reserves a

portion of a highway based on the number of passengers in a vehicle, organ transport vehicles that are clearly and identifiably marked as such on all sides of the vehicle are considered emergency vehicles and must be authorized to use the reserved portion of the highway.

(d) The department shall expand the high occupancy vehicle lane access pilot program to private, for hire vehicles regulated under chapter 81.72 RCW that have been specially manufactured, designed, or modified for the transportation of a person who has a mobility disability and uses a wheelchair or other assistive device. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, wheelchair-accessible taxicabs that are clearly and identifiably marked as such on all sides of the vehicle are considered public transportation vehicles and must be authorized to use the reserved portion of the highway.

(e) The department shall expand the high occupancy vehicle lane access pilot program to for hire nonemergency medical transportation vehicles, when in use for medical purposes, as described elsewhere in this act. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, nonemergency medical transportation vehicles that meet the requirements identified elsewhere in this act must be authorized to use the reserved portion of the highway.

(f) Nothing in this subsection (2) is intended to exempt these vehicles from paying tolls when they do not meet the occupancy requirements established by the department for express toll lanes.

(3) When regional transit authority construction activities are visible from a state highway, the department shall allow the regional transit authority to place safe and appropriate signage informing the public of the purpose of the construction activity.

(4) The department must make signage for low-height bridges a high priority.

NEW SECTION. Sec. 217. FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S

Motor Vehicle Account—State	
Appropriation	\$43,973,000

Motor Vehicle Account—Federal
Appropriation \$780,000

Motor Vehicle Account—Private/Local
Appropriation \$500,000

Multimodal Transportation Account—
State

Appropriation \$1,129,000

State Route Number 520 Corridor
Account—State

Appropriation \$185,000

Tacoma Narrows Toll Bridge Account—
State Appropriation \$150,000

Alaskan Way Viaduct Replacement
Project Account—

State Appropriation \$121,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation \$77,000

TOTAL APPROPRIATION \$46,915,000

The appropriations in this section are subject to the following conditions and limitations: \$6,000,000 of the motor vehicle account—state appropriation is provided solely for efforts to increase diversity in the transportation construction workforce through: (1) The preapprenticeship support services (PASS) program, which aims to increase diversity in the highway construction workforce and prepare individuals interested in entering the highway construction workforce. In addition to the services allowed by RCW 47.01.435, the PASS program may provide housing assistance for youth aging out of the foster care and juvenile rehabilitation systems in order to support the participation of these youth in a transportation-related preapprenticeship program; (2) assisting minority and women-owned businesses to perform work in the highway construction industry. This assistance shall include technical assistance, business training, counseling, guidance, prime to subcontractor relationship building, and a capacity building mentorship program. At a minimum, \$1,000,000 of the total appropriation in this subsection shall be directed towards the efforts outlined in this subsection. Of the total appropriation in this subsection, up to one full time position can be created to support all this work. The provider(s)

chosen to complete the work in this subsection shall be selected through a competitive bidding process. The program shall be administered by the Washington state department of transportation's office of equal opportunity.

NEW SECTION. Sec. 218. FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION PLANNING, DATA, AND RESEARCH—PROGRAM T

Motor Vehicle Account—State
Appropriation \$26,776,000

Motor Vehicle Account—Federal
Appropriation \$34,865,000

Motor Vehicle Account—Private/Local
Appropriation \$400,000

State Route Number 520 Corridor
Account—State

Appropriation \$406,000

Multimodal Transportation Account—
State Appropriation \$1,669,000

Multimodal Transportation Account—
Federal

Appropriation \$2,809,000

Multimodal Transportation Account—
Private/Local

Appropriation \$100,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation \$2,879,000

TOTAL APPROPRIATION \$69,904,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,879,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for completion of updating the state route number 167 master plan.

(2) \$406,000 of the state route number 520 corridor account—state appropriation is provided solely for the department to contract with the University of Washington department of mechanical engineering, to study measures to reduce noise impacts from the state route number 520 bridge expansion joints. The field testing shall be scheduled during existing construction, maintenance, or other scheduled closures to minimize

impacts. The testing must also ensure safety of the traveling public. The study shall examine testing methodologies and project timelines and costs. A final report must be submitted to the transportation committees of the legislature and the governor by March 1, 2022.

(3) \$5,900,000 of the motor vehicle account—federal appropriation and \$400,000 of the motor vehicle account—private/local appropriation are provided solely for delivery of the department's state planning and research work program and pooled fund research projects, provided that the department may not expend any amounts provided in this section on a long-range plan or corridor scenario analysis for I-5 from Tumwater to Marysville. This is not intended to reference or impact: The existing I-5 corridor from Mounts road to Tumwater design and operations alternatives analysis; design studies related to HOV lanes or operations; or where it is necessary to continue design and operations analysis related to projects already under development.

(4) \$4,080,000 of the motor vehicle account—federal appropriation is provided solely for the Forward Drive road usage charge research project overseen by the transportation commission using a portion of the amount of the federal grant award. The purpose of the Forward Drive road usage charge research project is to advance research in key policy areas related to road usage charge including assessing impacts of future mobility shifts on road usage charge revenues, conducting an equity analysis, updating and assessing emerging mileage reporting methods, determining opportunities to reduce cost of collection, conducting small-scale pilot tests, and identifying a long-term, detailed phase-in plan.

(5) \$500,000 of the multimodal transportation account—state appropriation is provided for the department to partner with the department of commerce in developing vehicle miles traveled targets for the counties in Washington state with (a) a population density of at least 100 people per square mile and a population of at least 200,000; or (b) a population density of at least 75 people per square mile and an annual growth rate of at least 1.75 percent as determined by the office of financial management. Given land use

patterns are key factors in travel demand and should be taken into consideration when developing the targets, the department and the department of commerce shall partner with local jurisdictions, regional transportation planning organizations and other stakeholders to inventory existing laws and rules that promote transportation and land use, identify gaps and make recommendations for changes in laws, rules and agency guidance, and establish a framework for considering underserved and rural communities in the evaluation. The department and the department of commerce shall provide an initial technical report by December 31, 2021, an interim report by June 22, 2022, and a final report to the governor and legislature by June 30, 2023, that includes a process for establishing vehicle miles traveled reduction targets, a recommended suite of options for local jurisdictions to achieve the targets, and funding requirements for state and local jurisdictions.

(6) \$500,0000 of the multimodal transportation account—state appropriation is provided solely for implementation of a state route number 161 corridor study to be conducted in consultation with Pierce Transit, Sound Transit, and other regional entities. The department must study practical solutions to address high vehicle volumes and delays in the corridor. The study should develop short-, mid-, and long-term strategies and identify potential improvements for the corridor or improvements to nearby roads that could help address the traffic congestion on state route number 161.

(7) \$800,000 of the motor vehicle account—state appropriation is provided solely for WSDOT to do a corridor study of SR 302 (Victor Area) to recommend safety and infrastructure improvements to address current damage and prevent future roadway collapse and landslides that have caused road closures.

NEW SECTION. Sec. 219. FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U

Motor Vehicle Account—State Appropriation	\$77,093,000
Multimodal Transportation Account— State Appropriation	\$3,045,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation \$6,000

State Route Number 520 Corridor
Account—State

Appropriation \$4,000

Tacoma Narrows Toll Bridge Account—
State

Appropriation \$2,000

Aeronautics Account—State
Appropriation \$1,000

Transportation Partnership Account—
State Appropriation \$23,000

Puget Sound Ferry Operations Account—
State Appropriation \$220,000

Connecting Washington Account—State
Appropriation \$184,000

TOTAL APPROPRIATION \$80,578,000

The appropriations in this section are
subject to the following conditions and
limitations:

(1) Consistent with existing protocol
and practices, for any negotiated
settlement of a claim against the state
for the department that exceeds
\$5,000,000, the department, in
conjunction with the attorney general and
the department of enterprise services,
shall notify the director of the office
of financial management and the
transportation committees of the
legislature.

(2) Beginning October 1, 2021, and
quarterly thereafter, the department, in
conjunction with the attorney general and
the department of enterprise services,
shall provide a report with judgments and
settlements dealing with the Washington
state ferry system to the director of the
office of financial management and the
transportation committees of the
legislature. The report must include
information on: (a) The number of claims
and settlements by type; (b) the average
claim and settlement by type; (c) defense
costs associated with those claims and
settlements; and (d) information on the
impacts of moving legal costs associated
with the Washington state ferry system
into the statewide self-insurance pool.

(3) Beginning October 1, 2021, and
quarterly thereafter, the department, in
conjunction with the attorney general and

the department of enterprise services,
shall provide a report with judgments and
settlements dealing with the nonferry
operations of the department to the
director of the office of financial
management and the transportation
committees of the legislature. The report
must include information on: (a) The
number of claims and settlements by type;
(b) the average claim and settlement by
type; and (c) defense costs associated
with those claims and settlements.

(4) When the department identifies
significant legal issues that have
potential transportation budget
implications, the department must
initiate a briefing for appropriate
legislative members or staff through the
office of the attorney general and its
legislative briefing protocol.

**NEW SECTION. Sec. 220. FOR THE
DEPARTMENT OF TRANSPORTATION—PUBLIC
TRANSPORTATION—PROGRAM V**

State Vehicle Parking Account—State
Appropriation \$784,000

Regional Mobility Grant Program
Account—State

Appropriation \$104,478,000

Rural Mobility Grant Program Account—
State

Appropriation \$33,168,000

Multimodal Transportation Account—
State

Appropriation \$146,827,000

Multimodal Transportation Account—
Federal

Appropriation \$3,574,000

Multimodal Transportation Account—
Local

Appropriation \$100,000

TOTAL APPROPRIATION \$288,931,000

The appropriations in this section are
subject to the following conditions and
limitations:

(1) \$72,698,000 of the multimodal
transportation account—state
appropriation is provided solely for a
grant program for special needs
transportation provided by transit
agencies and nonprofit providers of
transportation. Of this amount:

(a) \$16,526,000 of the multimodal transportation account—state appropriation is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers must be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided. Fuel type may not be a factor in the grant selection process.

(b) \$56,172,000 of the multimodal transportation account—state appropriation is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must, to the greatest extent practicable, have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies must be prorated based on the amount expended for demand response service and route deviated service in calendar year 2019 as reported in the "Summary of Public Transportation - 2019" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions. Fuel type may not be a factor in the grant selection process.

(2) \$33,168,000 of the rural mobility grant program account—state appropriation is provided solely for grants to aid small cities in rural areas as prescribed in RCW 47.66.100. Fuel type may not be a factor in the grant selection process.

(3) \$2,000,000 of the multimodal transportation account—state appropriation is provided solely for a vanpool grant program for: (i) Public transit agencies to add vanpools or replace vans; and (ii) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds.

Fuel type may not be a factor in the grant selection process.

(4) \$26,800,000 of the regional mobility grant program account—state appropriation is reappropriated and provided solely for the regional mobility grant projects identified in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - Public Transportation Program (V), except for the King County Metro Eastlake Off-Street Layover Facility project, for which \$4,524,000 is reappropriated, and the King County Metro Transit Speed & Reliability Hot Spot Imp Program project, for which \$950,000 is reappropriated.

(5) (a) \$77,679,000 of the regional mobility grant program account—state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - Public Transportation Program (V). The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds must be used only to fund projects identified in the LEAP transportation document referenced in this subsection. The department shall provide annual status reports on December 15, 2021, and December 15, 2022, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule. A grantee may not receive more than twenty-five percent of the amount appropriated in this subsection. Additionally, when allocating funding for the 2023-2025 biennium, no more than thirty percent of the total grant program may directly benefit or support one grantee. The department shall not approve any increases or changes to the scope of a project for the purpose of a grantee expending remaining funds on an awarded

grant. Fuel type may not be a factor in the grant selection process.

(b) In order to be eligible to receive a grant under (a) of this subsection during the 2021-2023 fiscal biennium, a transit agency must establish a process for private transportation providers to apply for the use of park and ride facilities. For purposes of this subsection, (i) "private transportation provider" means: An auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and (ii) "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees.

(6) Funds provided for the commute trip reduction (CTR) program may also be used for the growth and transportation efficiency center program.

(7) \$6,500,000 of the multimodal transportation account—state appropriation and \$784,000 of the state vehicle parking account—state appropriation are provided solely for CTR grants and activities. Fuel type may not be a factor in the grant selection process. Of this amount:

(a) \$30,000 of the state vehicle parking account—state appropriation is provided solely for the STAR pass program for state employees residing in Mason and Grays Harbor Counties. Use of the pass is for public transportation between Mason County and Thurston County, and Grays Harbor and Thurston County. The pass may also be used within Grays Harbor County. The STAR pass commute trip reduction program is open to any state employee who expresses intent to commute to his or her assigned state worksite using a public transit system currently participating in the STAR pass program.

(b) \$800,000 of the multimodal transportation account—state appropriation is provided solely for a first mile/last mile connections grant program. Eligible grant recipients include cities, businesses, nonprofits, and transportation network companies

with first mile/last mile solution proposals. Transit agencies are not eligible. The commute trip reduction board shall develop grant parameters, evaluation criteria, and evaluate grant proposals. The commute trip reduction board shall provide the transportation committees of the legislature a report on the effectiveness of this grant program and best practices for continuing the program.

(8) Except as provided otherwise in this subsection, \$28,263,000 of the multimodal transportation account—state appropriation is provided solely for connecting Washington transit projects identified in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021. It is the intent of the legislature that entities identified to receive funding in the LEAP document referenced in this subsection receive the amounts specified in the time frame specified in that LEAP document. If an entity has already completed a project in the LEAP document referenced in this subsection before the time frame identified, the entity may substitute another transit project or projects that cost a similar or lesser amount.

(9) The department shall not require more than a ten percent match from nonprofit transportation providers for state grants.

(10) \$375,000 of the multimodal transportation account—state appropriation is provided solely for Intercity Transit for the Dash shuttle program.

(11) \$31,993,000 of the multimodal transportation account—state appropriation is provided solely for the green transportation capital grant program established in chapter 287, Laws of 2019 (advancing green transportation adoption).

(12) \$555,000 of the multimodal transportation account—state appropriation is provided solely for an interagency transfer to the Washington State University extension energy program to establish and administer a technical assistance and education program for public agencies on the use of alternative fuel vehicles. The Washington State University extension energy program shall prepare a report regarding the utilization of the program and provide this report to the

transportation committees of the legislature by November 15, 2021.

NEW SECTION. Sec. 221. FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X

Puget Sound Ferry Operations Account—State

Appropriation \$421,103,000

Puget Sound Ferry Operations Account—Federal

Appropriation \$124,000,000

Puget Sound Ferry Operations Account—Private/Local

Appropriation \$121,000

TOTAL APPROPRIATION \$545,224,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2021-2023 supplemental and 2023-2025 omnibus transportation appropriations act requests, as determined jointly by the office of financial management, the Washington state ferries, and the transportation committees of the legislature. This level of detail must include the administrative functions in the operating as well as capital programs. The data in the tables in the report must be supplied in a digital file format.

(2) For the 2021-2023 fiscal biennium, the department may enter into a distributor controlled fuel hedging program and other methods of hedging approved by the fuel hedging committee, which must include a representative of the department of enterprise services.

(3) \$70,794,000 of the Puget Sound ferry operations account—state appropriation is provided solely for auto ferry vessel operating fuel in the 2021-2023 fiscal biennium, which reflect cost savings from a reduced biodiesel fuel requirement and, therefore, is contingent upon the enactment of section 703 of this act. The amount provided in this subsection represents the fuel budget for the purposes of calculating any ferry fare fuel surcharge. The department shall review future use of

alternative fuels and dual fuel configurations, including hydrogen.

(4) \$500,000 of the Puget Sound ferry operations account—state appropriation is provided solely for operating costs related to moving vessels for emergency capital repairs. Funds may only be spent after approval by the office of financial management.

(5) \$336,000 of the Puget Sound ferry operations account—state appropriation is provided solely for evacuation slide training.

(6) \$336,000 of the Puget Sound ferry operations account—state appropriation is provided solely for fall restraint labor and industries inspections.

(7) \$2,400,000 of the Puget Sound ferry operations account—state appropriation is provided solely for overtime expenses incurred by engine and deck crew members.

(8) \$735,000 of the Puget Sound ferry operations account—state appropriation is provided solely for familiarization for new assignments of engine crew and terminal staff.

(9) \$160,000 of the Puget Sound ferry operations account—state appropriation is provided solely for electronic navigation training.

(10) \$200,000 of the Puget Sound ferry operations account—state appropriation is provided solely for a cost benefit study of a second shift at the Eagle Harbor maintenance facility.

(11) \$688,000 of the Puget Sound ferry operations account—state appropriation is provided solely for new employee training.

(12) \$1,978,000 of the Puget Sound ferry operations account—state appropriation is provided solely for restoration of service to reflect increased ridership, availability of crewing, and available revenues. Expenditures may be made to resume service to Sidney British Columbia, including any service to the San Juans; to provide Saturday service on the Fauntleroy-Vashon-Southworth route; and to resume late night service on other routes in the system.

(13) The department must request reimbursement from the federal transit administration for the maximum amount of

ferry operating expenses eligible for reimbursement under federal law.

NEW SECTION. Sec. 222. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—OPERATING

Multimodal Transportation Account—State

Appropriation \$80,307,000

Multimodal Transportation Account—Private/Local

Appropriation \$46,000

Multimodal Transportation Account—Federal

Appropriation \$500,000

TOTAL APPROPRIATION \$80,853,000

The appropriations in this section are subject to the following conditions and limitations: The department is directed to continue to pursue efforts to reduce costs, increase ridership, and review Amtrak Cascades fares and fare schedules. Within thirty days of each annual cost/revenue reconciliation under the Amtrak service contract, the department shall report annual credits to the office of financial management and the legislative transportation committees. Annual credits from Amtrak to the department including, but not limited to, credits due to higher ridership, reduced level of service, and fare or fare schedule adjustments, must be used to offset corresponding amounts of the multimodal transportation account—state appropriation, which must be placed in reserve.

NEW SECTION. Sec. 223. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—OPERATING

Motor Vehicle Account—State
Appropriation \$12,465,000

Motor Vehicle Account—Federal
Appropriation \$2,567,000

Multiuse Roadway Safety Account—State
Appropriation \$900,000

TOTAL APPROPRIATION \$15,932,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,448,000 of the motor vehicle account—state appropriation from amounts set aside out of statewide fuel taxes distributed to counties according to RCW

46.68.120(3) and \$350,000 of the motor vehicle account—state appropriation are provided solely for the department to contract with the Washington state association of counties to:

(a) In coordination with stakeholders, identify county-owned fish passage barriers, and assess which barriers share the same stream system as state-owned fish passage barriers.

(b) Streamline and update the county road administration board's data dashboard, county reporting systems, and program management software to provide a more detailed, more transparent, and user-friendly platform for data management, reporting, and research by the public and other interested parties.

(c) A study of the use of county road right-of-way as a potential source of revenue for county road operating and maintenance needs with recommendations on their feasibility statewide.

(2) The entire multiuse roadway safety account—state appropriation is provided solely for grants under RCW 46.09.540, subject to the following limitations:

(a) Twenty-five percent of the amounts provided are reserved for counties that each have a population of fifteen thousand persons or less;

(b)(i) Seventy-five percent of the amounts provided are reserved for counties that each have a population exceeding fifteen thousand persons; and

(ii) No county that receives a grant or grants under (b) of this subsection may receive more than sixty thousand dollars in total grants.

(3)(a) By October 1, 2021, the department must report to the office of financial management and the transportation committees with recommendations regarding:

(i) Modifications to the agreement with Wahkiakum county regarding future state reimbursement for the Wahkiakum ferry operating and maintenance deficit; and

(ii) Cost-sharing models for operating and maintenance costs, which recognize the benefit of the ferry route to both Washington and Oregon.

(b) The reimbursement recommendations must reflect a mutual agreement with Wahkiakum county, which considers future

county ferry operating loss projections. The report may address the importance of the ferry route to the state highway system and whether there is a need for an increased role for the state department of transportation in the finance or operation of the ferry route.

TRANSPORTATION AGENCIES—CAPITAL

NEW SECTION. Sec. 301. FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

Freight Mobility Investment Account—State

Appropriation \$16,577,000

Freight Mobility Multimodal Account—State

Appropriation \$15,195,000

TOTAL APPROPRIATION \$31,772,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as otherwise provided in this section, the entire appropriations in this section are provided solely for the projects by amount, as listed in the LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - FMSIB.

(2) Until directed by the legislature, the board may not initiate a new call for projects.

(3)(a) For the 2021-2023 project appropriations, unless otherwise provided in this act, the director of the office of financial management may authorize a transfer of appropriation authority between projects as listed in the LEAP transportation document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - FMSIB project list in order for the board to manage project spending and support the efficient and timely delivery of all projects in the program. The office of financial management may authorize a transfer of appropriation authority between projects under the following conditions and limitations:

(i) Transfers from a project may not be made as a result of the reduction of the scope of a project or be made to support increases in the scope of a project;

(ii) Each transfer between projects may only occur if the director of the office of financial management finds that

any resulting change will not hinder the completion of the projects on the FMSIB LEAP list;

(iii) Transfers between projects may be made by the board without the formal written approval provided under this subsection (3)(a), provided that the transfer amount does not exceed \$250,000 or 10 percent of the total project, whichever is less. These transfers must be reported to the director of the office of financial management and the chairs of the house of representatives and senate transportation committees; and

(iv) Transfers may only be made in fiscal year 2023.

(b) At the time the board submits a request to transfer funds under this section, a copy of the request must be submitted to the chairs and ranking members of the transportation committees of the legislature.

(c) Before approval, the office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers in a timely manner and consider any concerns raised by the chairs and ranking members of the transportation committees.

(d) No fewer than 10 days after the receipt of a project transfer request, the director of the office of financial management must provide written notification to the board of any decision regarding project transfers, with copies submitted to the transportation committees of the legislature.

NEW SECTION. Sec. 302. FOR THE WASHINGTON STATE PATROL

State Patrol Highway Account—State Appropriation \$4,196,000

(1) \$695,000 of the state patrol highway account—state appropriation is provided solely for roof replacement.

(2) \$3,501,000 of the state patrol highway account—state appropriation is provided solely for the following projects:

(a) \$250,000 for emergency repairs;

(b) \$350,000 for fuel tank decommissioning;

(c) \$750,000 for generator and electrical replacement;

(d) \$195,000 for the exterior envelope of the Yakima office;

(e) \$466,000 for the snow cat shelter;

(f) \$325,000 for the weatherization of the Bow Hill inspection station;

(g) \$325,000 for the weatherization of the Sea-Tac north inspection station;

(h) \$200,000 for roof replacements originally authorized in the 2019-2021 biennium; and

(i) \$640,000 for the Marysville water and fire suppression project originally authorized in the 2019-2021 biennium.

The Washington state patrol may transfer funds between projects specified in this subsection to address cash flow requirements. If a project specified in this subsection is completed for less than the amount provided, the remainder may be transferred to another project specified in this subsection not to exceed the total appropriation provided in this subsection.

NEW SECTION. Sec. 303. FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account—State
Appropriation \$55,028,000

Motor Vehicle Account—State
Appropriation \$1,456,000

County Arterial Preservation Account—
State

Appropriation \$37,379,000

TOTAL APPROPRIATION \$93,863,000

NEW SECTION. Sec. 304. FOR THE TRANSPORTATION IMPROVEMENT BOARD

Small City Pavement and Sidewalk
Account—State

Appropriation \$4,100,000

Transportation Improvement Account—
State

Appropriation \$201,000,000

Complete Streets Grant Program
Account—State

Appropriation \$14,670,000

TOTAL APPROPRIATION \$219,770,000

The appropriations in this section are subject to the following conditions and limitations: \$7,500,000 of the transportation improvement account—state appropriation is provided solely

for the Relight Washington Program. Of this amount, \$5,000,000 is for cities with an assessed value of over \$2,000,000 that can demonstrate a sustainable return on investment when converting to energy efficient LED streetlights.

NEW SECTION. Sec. 305. FOR THE DEPARTMENT OF TRANSPORTATION—FACILITIES—PROGRAM D—(DEPARTMENT OF TRANSPORTATION—ONLY PROJECTS)—CAPITAL

Motor Vehicle Account—State
Appropriation \$10,852,000

Connecting Washington Account—State
Appropriation \$2,000,000

TOTAL APPROPRIATION \$12,852,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,000,000 of the connecting Washington account—state appropriation is provided solely for a new Olympic region maintenance and administration facility to be located on the department-owned site at the intersection of Marvin Road and 32nd Avenue in Lacey, Washington.

(2) (a) \$4,325,000 of the motor vehicle account—state appropriation is provided solely for payments of a financing contract for the department facility located at 15700 Dayton Ave N in Shoreline.

(b) Payments from the department of ecology pursuant to the agreement with the department to pay a share of the financing contract in (a) of this subsection must be deposited into the motor vehicle account.

NEW SECTION. Sec. 306. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I

Transportation Partnership Account—
State

Appropriation \$128,053,000

Motor Vehicle Account—State
Appropriation \$91,517,000

Motor Vehicle Account—Federal
Appropriation \$269,338,000

Motor Vehicle Account—Private/Local
Appropriation \$57,092,000

State Route Number 520 Corridor
Account—State

Appropriation \$15,940,000
 Connecting Washington Account—State
 Appropriation \$2,658,654,000
 Special Category C Account—State
 Appropriation \$105,363,000
 Multimodal Transportation Account—
 State
 Appropriation \$3,284,000
 Transportation 2003 Account (Nickel
 Account)—State
 Appropriation \$149,000
 Interstate 405 and State Route Number
 167 Express
 Toll Lanes Account—State
 Appropriation \$30,308,000
 Coronavirus State Fiscal Recovery
 Fund—Federal
 Appropriation \$340,000,000
 TOTAL APPROPRIATION
 \$3,699,698,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire connecting Washington account—state appropriation and the entire transportation partnership account—state appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document 2021-1 as developed March 22, 2021, Program - Highway Improvements Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 601 of this act.

(2) Except as provided otherwise in this section, the entire motor vehicle account—state appropriation and motor vehicle account—federal appropriation are provided solely for the projects and activities listed in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - Highway Improvements Program (I). Any federal funds gained through efficiencies, adjustments to the federal funds forecast, additional congressional action not related to a specific project or purpose, or the federal funds

redistribution process must then be applied to highway and bridge preservation activities or fish passage barrier corrections (OBI4001).

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act. Ten days prior to any transfer, the department must submit its request to the office of financial management and the transportation committees of the legislature and consider any concerns raised. The department shall submit a report on fiscal year funds transferred in the prior fiscal year using this subsection as part of the department's annual budget submittal.

(4) The connecting Washington account—state appropriation includes up to \$2,375,216,000 in proceeds from the sale of bonds authorized in RCW 47.10.889.

(5) The special category C account—state appropriation includes up to \$87,659,000 in proceeds from the sale of bonds authorized in RCW 47.10.812.

(6) The transportation partnership account—state appropriation includes up to \$47,226,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(7) \$69,450,000 of the transportation partnership account—state appropriation, \$2,258,000 of the motor vehicle account—private/local appropriation, and \$984,000 of the multimodal transportation account—state appropriation are provided solely for the SR 99/Alaskan Way Viaduct Replacement project (809936Z). It is the intent of the legislature that any legal damages paid to the state as a result of a lawsuit related to contractual provisions for construction and delivery of the Alaskan Way viaduct replacement project be used to repay project cost increases paid from the transportation partnership account—state funds.

(8) \$193,699,000 of the connecting Washington account—state appropriation is provided solely for the US 395 North Spokane Corridor project (M00800R).

(9) \$14,827,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for the I-405/SR 522 to I-5 Capacity Improvements project

(L2000234) for activities related to adding capacity on Interstate 405 between state route number 522 and Interstate 5, with the goals of increasing vehicle throughput and aligning project completion with the implementation of bus rapid transit in the vicinity of the project.

(10) (a) \$492,349,000 of the connecting Washington account—state appropriation and \$355,000 of the motor vehicle account—private/local appropriation are provided solely for the SR 520 Seattle Corridor Improvements - West End project (M00400R).

(b) Upon completion of the Montlake Phase of the West End project (current anticipated contract completion of 2023), WSDOT shall sell that portion of the property not used for permanent transportation improvements and initiate a process to convey that surplus property to a subsequent owner.

(11) \$359,522,000 of the connecting Washington account—state appropriation, \$105,523,000 of the motor vehicle account—federal appropriation, \$15,369,000 of the motor vehicle account—private/local appropriation, \$2,300,000 of the multimodal transportation account—state appropriation, and \$2,500,000 of the motor vehicle account—state appropriation are provided solely for the SR 167/SR 509 Puget Sound Gateway project (M00600R).

(a) Any savings on the project must stay on the Puget Sound Gateway corridor until the project is complete.

(b) In making budget allocations to the Puget Sound Gateway project, the department shall implement the project's construction as a single corridor investment. The department shall develop a coordinated corridor construction and implementation plan for state route number 167 and state route number 509 in collaboration with affected stakeholders. Specific funding allocations must be based on where and when specific project segments are ready for construction to move forward and investments can be best optimized for timely project completion. Emphasis must be placed on avoiding gaps in fund expenditures for either project.

(c) It is the legislature's intent that the department shall construct a full single-point urban interchange at

the junction of state route number 161 (Meridian avenue) and state route number 167 and a full single-point urban interchange at the junction of state route number 509 and 188th Street. If the department receives additional funds from an outside source for this project after the base project is fully funded, the funds must first be applied toward the completion of these two full single-point urban interchanges.

(d) Of the amounts provided in this subsection, \$2,300,000 of the multimodal transportation account—state appropriation is provided solely for the design phase of the Puyallup to Tacoma multiuse trail along the SR 167 right-of-way acquired for the project to connect a network of new and existing trails from Mount Rainier to Point Defiance Park.

(12) The department shall itemize all future requests for the construction of buildings on a project list and submit them through the transportation executive information system as part of the department's annual budget submittal. It is the intent of the legislature that new facility construction must be transparent and not appropriated within larger highway construction projects.

(13) Any advisory group that the department convenes during the 2021-2023 fiscal biennium must consider the interests of the entire state of Washington.

(14) The legislature continues to prioritize the replacement of the state's aging infrastructure and recognizes the importance of reusing and recycling construction aggregate and recycled concrete materials in our transportation system. To accomplish Washington state's sustainability goals in transportation and in accordance with RCW 70.95.805, the legislature reaffirms its determination that recycled concrete aggregate and other transportation building materials are natural resource construction materials that are too valuable to be wasted and landfilled, and are a commodity as defined in WAC 173-350-100.

Further, the legislature determines construction aggregate and recycled concrete materials substantially meet widely recognized international, national, and local standards and specifications referenced in American society for testing and materials,

American concrete institute, Washington state department of transportation, Seattle department of transportation, American public works association, federal aviation administration, and federal highway administration specifications, and are described as necessary and desirable products for recycling and reuse by state and federal agencies.

As these recyclable materials have well established markets, are substantially a primary or secondary product of necessary construction processes and production, and are managed as an item of commercial value, construction aggregate and recycled concrete materials are exempt from chapter 173-350 WAC.

(15) (a) \$26,928,000 of the motor vehicle account—state appropriation and \$1,671,000 of the motor vehicle account—private/local appropriation are provided solely for supporting a project office and the continued work towards replacement of the Interstate 5 bridge across the Columbia river (G2000088).

(b) The work of this project office includes, but is not limited to, the reevaluation of the purpose and need identified for the project previously known as the Columbia river crossing, the reevaluation of permits and development of a finance plan, the reengagement of key stakeholders and the public, and the reevaluation of scope, schedule, and budget for a reinvigorated bistate effort for replacement of the Interstate 5 Columbia river bridge. When reevaluating the finance plan for the project, the department shall assume that some costs of the new facility may be covered by tolls. The project office must also study the possible different governance structures for a bridge authority that would provide for the joint administration of the bridges over the Columbia river between Oregon and Washington. As part of this study, the project office must examine the feasibility and necessity of an interstate compact in conjunction with the national center for interstate compacts.

(c) During the 2021-2023 biennium the department shall have as a goal to:

(i) Conduct all work necessary to prepare and publish a draft SEIS;

(ii) Coordinate with regulatory agencies to begin the process of obtaining environmental approvals and permits;

(iii) Identify a locally preferred alternative; and

(iv) Begin preparing a final SEIS.

The department shall aim to provide progress reports on these activities to the governor and the transportation committees of the legislature by December 1, 2021, June 1, 2022, and December 1, 2022.

(16) \$1,000,000 of the connecting Washington account—state appropriation is provided solely for the North Lewis County transportation study. The study shall examine new, alternate routes for vehicular and truck traffic at the Harrison interchange (Exit 82) in North Centralia and shall allow for a site and configuration to be selected and feasibility to be conducted for final design, permitting and construction of the I-5/North Lewis county Interchange project (L2000204).

(17) (a) \$332,500,000 of the connecting Washington account—state appropriation, \$52,036,000 of the motor vehicle account—federal appropriation, and \$1,849,000 of the motor vehicle account—state appropriation are provided solely for the Fish Passage Barrier Removal project (0BI4001) with the intent of fully complying with the federal *U.S. v. Washington* court injunction by 2030.

(b) The department shall coordinate with the Brian Abbott fish passage barrier removal board to use a watershed approach to maximize habitat gain by replacing both state and local culverts. The department shall deliver high habitat value fish passage barrier corrections that it has identified, guided by the following factors: Opportunity to bundle projects, ability to leverage investments by others, presence of other barriers, project readiness, other transportation projects in the area, and transportation impacts.

(c) The department must keep track of, for each barrier removed: (i) The location; (ii) the amount of fish habitat gain; and (iii) the amount spent to comply with the injunction.

(18) \$340,000,000 of the Coronavirus State Fiscal Recovery Account—federal appropriation is provided solely for

water infrastructure projects that remove fish passage barriers that are impeding state streams, rivers, and other waterways (OBI4001), as permitted under the federal American rescue plan act of 2021. Once available, these amounts must be applied prior to other amounts provided for this purpose (OBI4001). These water infrastructure projects are intended to meet compliance requirements with the federal *U.S. v. Washington* court injunction by 2030.

(19) (a) The Washington state department of transportation is directed to pursue compliance with the *U.S. v. Washington* permanent injunction by delivering culvert corrections within the injunction area guided by the principle of providing the greatest fisheries habitat gain at the earliest time and considering the following factors: Opportunity to bundle projects, tribal priorities, ability to leverage investments by others, presence of other barriers, project readiness, culvert condition, other transportation projects in the area, and transportation impacts.

(b) The department and Brian Abbott fish barrier removal board must provide updates on the implementation of the statewide culvert remediation plan to the legislature by November 1, 2021, and June 1, 2022.

(20) \$14,669,000 of the connecting Washington account—state appropriation and \$3,037,000 of the motor vehicle account—private/local appropriation are provided solely for the I-90/Barker to Harvard - Improve Interchanges & Local Roads project (L2000122). The connecting Washington account appropriation for the improvements that fall within the city of Liberty Lake may only be expended if the city of Liberty Lake agrees to cover any project costs within the city of Liberty Lake above the \$20,900,000 of state appropriation provided for the total project in LEAP Transportation Document 2021-1 as developed March 22, 2021, Program - Highway Improvements (I).

(21) \$15,189,000 of the motor vehicle account—federal appropriation, \$259,000 of the motor vehicle account—state appropriation, and \$15,481,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation are provided solely for the SR 167/SR 410 to SR 18 - Congestion Management project (316706C).

(22) \$18,914,000 of the Special Category C account—state appropriation is provided solely for the SR 18 Widening - Issaquah/Hobart Rd to Raging River project (L1000199) for improving and widening state route number 18 to four lanes from Issaquah-Hobart Road to Raging River.

(23) \$1,090,000 of the motor vehicle account—state appropriation is provided solely for the US 101/East Sequim Corridor Improvements project (L2000343).

(24) \$12,139,000 of the motor vehicle account—state appropriation and \$9,104,000 of the connecting Washington account—state appropriation are provided solely for the SR 522/Paradise Lk Rd Interchange & Widening on SR 522 (Design/Engineering) project (NPARADI).

(25) \$1,378,000 of the motor vehicle account—federal appropriation is provided solely for the US 101/Morse Creek Safety Barrier project (L1000247).

(26) \$915,000 of the motor vehicle account—state appropriation is provided solely for the SR 162/410 Interchange Design and Right of Way project (L1000276).

(27) (a) \$6,581,000 of the connecting Washington account—state appropriation is provided solely for the US Hwy 2 Safety project (N00200R).

(b) Of the amounts provided in this subsection, \$2,000,000 of the connecting Washington account—state appropriation is for the department to conduct a Highway 2 Safety-Capacity study.

(28) The department may advance the I-405/SR 522 to I-5 Capacity Improvements (L2000234) project and construct the project earlier than is scheduled in the LEAP list if funding is identified by September 1, 2021. The department shall explore alternatives to toll revenue funding including but not limited to federal loan and grant programs. The department shall explore phasing and modifying the project to align as best as possible with the anticipated deployment of bus rapid transit on the corridor in 2023-25. The department shall report back to the transportation committees of the legislature on this work prior to September 2021.

**NEW SECTION. Sec. 307. FOR THE
DEPARTMENT OF TRANSPORTATION—
PRESERVATION—PROGRAM P**

Recreational Vehicle Account—State
Appropriation \$1,520,000

Transportation Partnership Account—
State
Appropriation \$16,394,000

Motor Vehicle Account—State
Appropriation \$85,444,000

Motor Vehicle Account—Federal
Appropriation \$465,871,000

Motor Vehicle Account—Private/Local
Appropriation \$10,792,000

State Route Number 520 Corridor
Account—State
Appropriation \$1,891,000

Connecting Washington Account—State
Appropriation \$182,780,000

Tacoma Narrows Toll Bridge Account—
State
Appropriation \$9,730,000

Alaskan Way Viaduct Replacement
Project Account—State
Appropriation \$314,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation \$26,039,000

Transportation 2003 Account (Nickel
Account)—State
Appropriation \$49,105,000

TOTAL APPROPRIATION \$849,880,000

The appropriations in this section are
subject to the following conditions and
limitations:

(1) Except as provided otherwise in
this section, the entire connecting
Washington account—state appropriation
and the entire transportation
partnership account—state appropriation
are provided solely for the projects and
activities as listed by fund, project,
and amount in LEAP Transportation
Document 2021-1 as developed March 22,
2021, Program - Highway Preservation
Program (P). However, limited transfers
of specific line-item project
appropriations may occur between

projects for those amounts listed subject
to the conditions and limitations in
section 601 of this act. The department
may not convene a Washington freight
advisory committee. When submitting its
2021-2023 supplemental and 2023-2025
biennial budget requests, the department
shall provide a prioritized freight
project list for the national highway
freight program funds that first
addresses shortfalls in funding for
connecting Washington act projects. The
freight project list must describe how
the estimated funding allocation for the
national highway freight program for
federal fiscal years 2022-2025 could be
invested and matched.

(2) Except as provided otherwise in
this section, the entire motor vehicle
account—state appropriation and motor
vehicle account—federal appropriation
are provided solely for the projects and
activities listed in LEAP Transportation
Document 2021-2 ALL PROJECTS as developed
March 22, 2021, Program - Highway
Preservation Program (P). Any federal
funds gained through efficiencies,
adjustments to the federal funds
forecast, additional congressional
action not related to a specific project
or purpose, or the federal funds
redistribution process must then be
applied to highway and bridge
preservation activities or fish passage
barrier corrections (OBI4001).

(3) Within the motor vehicle account—
state appropriation and motor vehicle
account—federal appropriation, the
department may transfer funds between
programs I and P, except for funds that
are otherwise restricted in this act. Ten
days prior to any transfer, the
department must submit its request to the
office of financial management and the
transportation committees of the
legislature and consider any concerns
raised. The department shall submit a
report on fiscal year funds transferred
in the prior fiscal year using this
subsection as part of the department's
annual budget submittal.

(4) \$5,166,000 of the connecting
Washington account—state appropriation
is provided solely for the land mobile
radio upgrade (G2000055) and is subject
to the conditions, limitations, and
review provided in section 701 of this
act. The land mobile radio project is
subject to technical oversight by the
office of the chief information officer.
The department, in collaboration with the

office of the chief information officer, shall identify where existing or proposed mobile radio technology investments should be consolidated, identify when existing or proposed mobile radio technology investments can be reused or leveraged to meet multiagency needs, increase mobile radio interoperability between agencies, and identify how redundant investments can be reduced over time. The department shall also provide quarterly reports to the technology services board on project progress.

(5) \$5,000,000 of the motor vehicle account—state appropriation is provided solely for extraordinary costs incurred from litigation awards, settlements, or dispute mitigation activities not eligible for funding from the self-insurance fund. The amount provided in this subsection must be held in unallotted status until the department submits a request to the office of financial management that includes documentation detailing litigation-related expenses. The office of financial management may release the funds only when it determines that all other funds designated for litigation awards, settlements, and dispute mitigation activities have been exhausted. No funds provided in this subsection may be expended on any legal fees related to the SR 99/Alaskan Way viaduct replacement project (809936Z).

(6) The appropriation in this section includes funding for starting planning, engineering, and construction of the Elwha River bridge replacement. To the greatest extent practicable, the department shall maintain public access on the existing route.

(7) The department must consult with the Washington state patrol and the office of financial management during the design phase of any improvement or preservation project that could impact Washington state patrol weigh station operations. During the design phase of any such project, the department must estimate the cost of designing around the affected weigh station's current operations, as well as the cost of moving the affected weigh station.

(8) Within the connecting Washington account—state appropriation, the department may transfer funds from Highway System Preservation (L1100071) to other preservation projects listed in the LEAP transportation document identified in subsection (1) of this

section, if it is determined necessary for completion of these high priority preservation projects. The department's next budget submittal after using this subsection must appropriately reflect the transfer.

NEW SECTION. Sec. 308. FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—CAPITAL

Motor Vehicle Account—State	
Appropriation	\$8,273,000

Motor Vehicle Account—Federal	
Appropriation	\$5,289,000

Motor Vehicle Account—Private/Local	
Appropriation	\$500,000

Interstate 405 and State Route Number 167 Express

Toll Lanes Account—State	
Appropriation	\$900,000

TOTAL APPROPRIATION \$14,962,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$579,000 of the motor vehicle account—state appropriation is provided solely for the SR 99 Aurora Bridge ITS project (L2000338).

(2) \$1,000,000 of the motor vehicle account—state appropriation is provided solely for the Challenge Seattle project (000009Q). The department shall provide a progress report on this project to the transportation committees of the legislature by January 15, 2022.

NEW SECTION. Sec. 309. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W

Puget Sound Capital Construction	
Account—State	

Appropriation	\$128,759,000
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Puget Sound Capital Construction	
Account—Federal	

Appropriation	\$139,188,000
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Puget Sound Capital Construction	
Account—Private/Local	

Appropriation	\$312,000
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Transportation Partnership Account—	
State	

Appropriation	\$8,410,000
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Connecting Washington Account—State
Appropriation \$75,640,000

Capital Vessel Replacement Account—
State

Appropriation \$152,453,000

TOTAL APPROPRIATION \$504,762,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - Washington State Ferries Capital Program (W).

(2) No additional funding may be allocated or expended for terminal electrification purposes.

(3) \$28,097,000 of the Puget Sound capital construction account—federal appropriation, \$71,293,000 of the connecting Washington account—state appropriation, and \$809,000 of the Puget Sound capital construction account—state appropriation are provided solely for the Seattle Terminal Replacement project (900010L).

(4) \$5,000,000 of the Puget Sound capital construction account—state appropriation is provided solely for emergency capital repair costs (999910K). Funds may only be spent after approval by the office of financial management.

(5) \$1,277,000 of the Puget Sound capital construction account—state appropriation is provided solely for the ORCA card next generation project (L2000300). The ferry system shall work with Washington technology solutions and the tolling division on the development of a new, interoperable ticketing system.

(6) \$4,200,000 of the connecting Washington account—state appropriation and \$2,200,000 of the Puget Sound operating account—federal appropriation are provided solely for ferry vessel and terminal preservation (L2000110). The funds provided in this subsection must be used for unplanned preservation needs before shifting funding from other preservation projects.

(7) \$24,750,000 of the Puget Sound capital construction account—state

appropriation is provided solely for the conversion of up to two Jumbo Mark II vessels to electric hybrid propulsion (G2000084). The department shall seek additional funds for the purposes of this subsection. The department may spend from the Puget Sound capital construction account—state appropriation in this section only as much as the department receives in Volkswagen settlement funds for the purposes of this subsection.

(8) \$152,453,000 of the capital vessel replacement account—state appropriation is provided solely for the acquisition of a 144-car hybrid-electric vessel. The commencement of construction of new vessels for the ferry system is important not only for safety reasons, but also to keep skilled marine construction jobs in the Puget Sound region and to sustain the capacity of the region to meet the ongoing construction and preservation needs of the ferry system fleet of vessels. The legislature has determined that the current vessel procurement process must move forward with all due speed, balancing the interests of both the taxpayers and shipyards. To accomplish construction of vessels in accordance with RCW 47.60.810, the prevailing shipbuilder, for vessels initially funded after July 1, 2020, is encouraged to follow the historical practice of subcontracting the construction of ferry superstructures to a separate nonaffiliated contractor located within the Puget Sound region, that is qualified in accordance with RCW 47.60.690.

(9) The capital vessel replacement account—state appropriation includes up to \$152,453,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(10) For the 2021-2023 biennium, the marine division shall provide to the office of financial management and the legislative transportation committees the following reports on ferry capital projects:

(a) On a semiannual basis the report must include a status update on projects with funding provided in (a)(i) through (iii) of this subsection including, but not limited to, the following:

(i) Anticipated cost increases and cost savings;

(ii) Anticipated cash flow and schedule changes; and

(iii) Explanations for the changes.

(b) On an annual basis the report must include a status update on vessel and terminal preservation and improvement plans including, but not limited to, the following:

- (i) What work has been done;
- (ii) How have schedules shifted; and
- (iii) Associated changes in funding among projects, accompanied by explanations for the changes.

(c) On an annual basis the report must include an update on the implementation of the maintenance management system with recommendations for using the system to improve the efficiency of project reporting under this subsection.

NEW SECTION. Sec. 310. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL

Essential Rail Assistance Account— State Appropriation	\$550,000
Transportation Infrastructure Account—State	
Appropriation	\$5,456,000
Multimodal Transportation Account— State	
Appropriation	\$79,754,000
Multimodal Transportation Account— Federal	
Appropriation	\$41,219,000
TOTAL APPROPRIATION	\$126,979,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - Rail Program (Y).

(2) \$5,089,000 of the transportation infrastructure account—state appropriation is provided solely for new low-interest loans approved by the department through the freight rail investment bank (FRIB) program. The department shall issue FRIB program loans with a repayment period of no more than ten years, and charge only so much interest as is necessary to recoup the department's costs to administer the

loans. The department shall report annually to the transportation committees of the legislature and the office of financial management on all FRIB loans issued.

(3) \$7,040,000 of the multimodal transportation account—state appropriation is provided solely for new statewide emergent freight rail assistance projects identified in the LEAP transportation document referenced in subsection (1) of this section.

(4) \$367,000 of the transportation infrastructure account—state appropriation and \$1,100,000 of the multimodal transportation account—state appropriation are provided solely to reimburse Highline Grain, LLC for approved work completed on Palouse River and Coulee City (PCC) railroad track in Spokane county between the BNSF Railway Interchange at Cheney and Geiger Junction and must be administered in a manner consistent with freight rail assistance program projects. The value of the public benefit of this project is expected to meet or exceed the cost of this project in: Shipper savings on transportation costs; jobs saved in rail-dependent industries; and/or reduced future costs to repair wear and tear on state and local highways due to fewer annual truck trips (reduced vehicle miles traveled). The amounts provided in this subsection are not a commitment for future legislatures, but it is the legislature's intent that future legislatures will work to approve biennial appropriations until the full \$7,337,000 cost of this project is reimbursed.

(5) (a) \$550,000 of the essential rail assistance account—state appropriation is provided solely for the purpose of the rehabilitation and maintenance of the Palouse river and Coulee City railroad line (F01111B).

(b) Expenditures from the essential rail assistance account—state in this subsection may not exceed the combined total of:

(i) Revenues and transfers deposited into the essential rail assistance account from leases and sale of property relating to the Palouse river and Coulee City railroad;

(ii) Revenues from trackage rights agreement fees paid by shippers; and

(iii) Revenues and transfers transferred from the miscellaneous program account to the essential rail assistance account, pursuant to RCW 47.76.360, for the purpose of sustaining the grain train program by maintaining the Palouse river and Coulee City railroad.

(6) The department shall issue a call for projects for the freight rail assistance program, and shall evaluate the applications in a manner consistent with past practices as specified in section 309, chapter 367, Laws of 2011. By November 15, 2022, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(7) \$12,077,000 of the multimodal transportation account—state appropriation is provided solely as expenditure authority for any insurance proceeds received by the state for Passenger Rail Equipment Replacement (project 700010C.) The department must use this expenditure authority only to purchase replacement equipment that has been competitively procured and for service recovery needs and corrective actions related to the December 2017 derailment.

(8) It is the intent of the legislature to encourage the department to pursue federal grant opportunities leveraging up to \$6,696,000 in connecting Washington programmed funds to be used as a state match to improve the state-owned Palouse river and Coulee City system. The amount listed in this subsection is not a commitment for future legislatures, but is the legislature's intent that future legislatures will work to approve biennial appropriations up to a state match share not to exceed \$6,696,000 of a grant award.

NEW SECTION. Sec. 311. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL

Highway Infrastructure Account—State
Appropriation \$793,000

Highway Infrastructure Account—
Federal Appropriation \$1,600,000

Transportation Partnership Account—
State
Appropriation \$750,000

Motor Vehicle Account—State
Appropriation \$17,564,000

Motor Vehicle Account—Federal
Appropriation \$43,698,000

Motor Vehicle Account—Private/Local
Appropriation \$6,600,000

Connecting Washington Account—State
Appropriation \$116,792,000

Multimodal Transportation Account—
State
Appropriation \$88,145,000

TOTAL APPROPRIATION \$275,942,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021, Program - Local Programs Program (Z).

(2) The amounts identified in the LEAP transportation document referenced under subsection (1) of this section for pedestrian safety/safe routes to school are as follows:

(a) \$36,760,000 of the multimodal transportation account—state appropriation is provided solely for newly selected pedestrian and bicycle safety program projects. \$9,233,000 of the multimodal transportation account—state appropriation is reappropriated for pedestrian and bicycle safety program projects selected in the previous biennia (L2000188).

(b) \$11,400,000 of the motor vehicle account—federal appropriation and \$26,900,000 of the multimodal transportation account—state appropriation are provided solely for newly selected safe routes to school projects. \$7,944,000 of the motor vehicle account—federal appropriation and \$4,647,000 of the multimodal transportation account—state appropriation are reappropriated for safe routes to school projects selected in the previous biennia (L2000189). The department may consider the special situations facing high-need areas, as defined by schools or project areas in which the percentage of the children eligible to receive free and reduced-

price meals under the national school lunch program is equal to, or greater than, the state average as determined by the department, when evaluating project proposals against established funding criteria while ensuring continued compliance with federal eligibility requirements.

(3) The department shall submit a report to the transportation committees of the legislature by December 1, 2021, and December 1, 2022, on the status of projects funded as part of the pedestrian safety/safe routes to school grant program. The report must include, but is not limited to, a list of projects selected and a brief description of each project's status. In its December 1, 2021, report the department must also include recommended changes to the pedestrian safety/safe routes to school grant program application and selection processes to increase utilization by a greater diversity of jurisdictions.

(4) \$6,561,000 of the multimodal transportation account—state appropriation is provided solely for bicycle and pedestrian projects listed in the LEAP transportation document referenced in subsection (1) of this section.

(5) \$10,097,000 of the connecting Washington account—state appropriation is provided solely for the Covington Connector (L2000104).

(6)(a) \$12,500,000 of the motor vehicle account—federal appropriation is provided solely for national highway freight network projects identified on the project list submitted in accordance with section 218(4)(b), chapter 14, Laws of 2016 on October 31, 2016.

(b) \$11,679,000 of the motor vehicle account—federal appropriation is for acceleration of local preservation projects that ensure the reliable movement of freight on the national highway freight system (G2000100). The department will identify projects through its current national highway system asset management call for projects with applications due in February 2021. The department shall give priority to those projects that can be obligated by September 30, 2021.

NEW SECTION. Sec. 312. ANNUAL REPORTING REQUIREMENTS FOR CAPITAL PROGRAM

(1) As part of its annual budget submittal, the department of transportation shall provide an update to the report provided to the legislature in the prior fiscal year that: (a) Compares the original project cost estimates approved in the 2003, 2005, and 2015 revenue package project lists to the completed cost of the project, or the most recent legislatively approved budget and total project costs for projects not yet completed; (b) identifies highway projects that may be reduced in scope and still achieve a functional benefit; (c) identifies highway projects that have experienced scope increases and that can be reduced in scope; (d) identifies highway projects that have lost significant local or regional contributions that were essential to completing the project; (e) identifies risk reserves and contingency amounts allocated to projects; and (f) lists the nickel, TPA, and connecting Washington projects charging to the Nickel/TPA/CWA Environmental Mitigation Reserve (OBI4ENV) and the Nickel/TPA Projects Completed with Minor Ongoing Expenditures project (OBI100B), and the amount each project is charging.

(2) As part of its annual budget submittal, the department of transportation shall provide: (a) An annual report on the number of toll credits the department has accumulated and how the department has used the toll credits, and (b) a status report on the projects funded using federal national highway freight program funds.

NEW SECTION. Sec. 313. QUARTERLY REPORTING REQUIREMENTS FOR CAPITAL PROGRAM

On a quarterly basis, the department of transportation shall provide to the office of financial management and the legislative transportation committees a report for all capital projects, except for ferry projects subject to the reporting requirements established elsewhere in this act, that must include: (1) A TEIS version containing actual capital expenditures for all projects consistent with the structure of the most recently enacted budget; (2) anticipated cost savings, cost increases, reappropriations, and schedule adjustments for all projects consistent with the structure of the most recently enacted budget; (3) the award amount, the engineer's estimate, and the number of bidders for all active projects

consistent with the structure of the most recently enacted budget; (4) risk reserves and contingency amounts for all projects consistent with the structure of the most recently enacted budget.

NEW SECTION. Sec. 314. FEDERAL FUNDS RECEIVED FOR CAPITAL PROJECT EXPENDITURES

To the greatest extent practicable, the department of transportation shall expend federal funds received for capital project expenditures before state funds.

NEW SECTION. Sec. 315. NOTIFICATION REQUIREMENTS FOR PAUSES AND CANCELLATIONS

(1) The department shall notify the transportation committees of the legislature when it intends to pause for a significant length of time or not proceed with operating items or capital projects included as budget provisos or on project lists. When feasible, this notification shall be provided prior to the pause or cancellation and at least seven days in advance of any public announcement related to such a pause or cancellation.

(2) At the time of notification, the department shall provide an explanation for the reason or reasons for the pause or cancellation for each operating budget item and capital project. The explanation shall include specific reasons for each pause or cancellation, in addition to a statement of the broad rationale for the pause or cancellation.

(3) When feasible, the department shall make best efforts to keep the transportation committees of the legislature informed of an evaluation process underway for selecting operating budget items and capital projects to be paused or cancelled, providing updates as its selection efforts proceed.

(4) When exigent circumstances prevent prior notice of a pause or cancellation from being provided to the transportation committees of the legislature, the department shall provide the information required under this section to the transportation committees of the legislature as soon as is practicable.

TRANSFERS AND DISTRIBUTIONS

NEW SECTION. Sec. 401. 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 ACCOUNT AND TRANSPORTATION FUND REVENUE

Transportation Partnership Account—State Appropriation \$743,000

Connecting Washington Account—State Appropriation \$10,548,000

Special Category C Account—State Appropriation \$438,000

Highway Bond Retirement Account—State Appropriation \$1,462,779,000

Ferry Bond Retirement Account—State Appropriation \$17,150,000

Transportation Improvement Board Bond Retirement

Account—State Appropriation \$11,770,000

Nondebt-Limit Reimbursable Bond Retirement

Account—State Appropriation \$29,323,000

Toll Facility Bond Retirement Account—State

Appropriation \$76,376,000

TOTAL APPROPRIATION \$1,609,127,000

NEW SECTION. Sec. 402. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES

Transportation Partnership Account—State

Appropriation \$149,000

Connecting Washington Account—State Appropriation \$2,110,000

Special Category C Account—State Appropriation \$88,000

TOTAL APPROPRIATION \$2,347,000

NEW SECTION. Sec. 403. FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION

Motor Vehicle Account—State Appropriation:

For motor vehicle fuel tax distributions to

cities and counties \$467,390,000

NEW SECTION. Sec. 404. FOR THE STATE TREASURER—TRANSFERS

Motor Vehicle Account—State
Appropriation:

For motor vehicle fuel tax refunds and
statutory transfers
\$1,974,599,000

**NEW SECTION. Sec. 405. FOR THE STATE
TREASURER—STATUTORY TRANSFERS**

Waste Tire Removal Account—State
Appropriation:

For transfer to the Motor Vehicle
Account—State \$8,771,000

**NEW SECTION. Sec. 406. FOR THE
DEPARTMENT OF LICENSING—TRANSFERS**

Motor Vehicle Account—State
Appropriation:

For motor vehicle fuel tax refunds and
transfers \$235,675,000

**NEW SECTION. Sec. 407. FOR THE STATE
TREASURER—ADMINISTRATIVE TRANSFERS**

(1) Highway Safety Account—State
Appropriation:

For transfer to the State Patrol
Highway

Account—State \$27,000,000

(2) (a) Transportation Partnership
Account—State

Appropriation: For transfer to the
Capital Vessel

Replacement Account—State
\$152,453,000

(b) The amount transferred in this
subsection represents proceeds from the
sale of bonds authorized in RCW
47.10.873.

(3) (a) Transportation Partnership
Account—State

Appropriation: For transfer to the
Tacoma Narrows Toll Bridge Account—State
\$46,000,000

(b) It is the intent of the legislature
that this transfer is temporary, for the
purpose of minimizing the impact of toll
increases, and an equivalent reimbursing
transfer is to occur after the debt
service and deferred sales tax on the
Tacoma Narrows bridge construction costs
are fully repaid in accordance with
chapter 195, Laws of 2018.

(4) Motor Vehicle Account—State
Appropriation:

For transfer to the Alaskan Way
Viaduct Replacement

Project Account—State \$6,269,000

(5) Motor Vehicle Account—State
Appropriation:

For transfer to the County Arterial
Preservation

Account—State \$7,666,000

(6) Motor Vehicle Account—State
Appropriation:

For transfer to the Freight Mobility
Investment

Account—State \$5,511,000

(7) Motor Vehicle Account—State
Appropriation:

For transfer to the Rural Arterial
Trust Account—State \$9,331,000

(8) Motor Vehicle Account—State
Appropriation:

For transfer to the Transportation
Improvement

Account—State \$18,688,000

(9) Motor Vehicle Account—State
Appropriation:

For transfer to the Transportation
2003 Account

(Nickel Account)—State \$20,000,000

(10) Motor Vehicle Account—State
Appropriation:

For transfer to the County Road
Administration Board

Emergency Loan Account—State
\$5,000,000

(11) Rural Mobility Grant Program
Account—State

Appropriation: For transfer to the
Multimodal

Transportation Account—State
\$3,000,000

(12) State Route Number 520 Civil
Penalties

Account—State Appropriation: For
transfer to the

State Route Number 520 Corridor
Account—State \$1,532,000

(13) Capital Vessel Replacement
Account—State

Appropriation: For transfer to the Connecting	Grant Program Account—State	\$15,223,000
Washington Account—State	(22) (a) Alaskan Way Viaduct Replacement Project	
\$35,000,000		
(14) Multimodal Transportation Account—State	Account—State	Appropriation: For transfer to the
Appropriation: For transfer to the Aeronautics	Transportation Partnership Account—State	\$28,660,000
Account—State	\$550,000	(b) The amount transferred in this subsection represents repayment of debt service incurred for the construction of the SR 99/Alaskan Way Viaduct Replacement project (809936Z).
(15) Capital Vessel Replacement Account—State		
Appropriation: For transfer to the Transportation	(23) Tacoma Narrows Toll Bridge Account—State	
Partnership Account—State		Appropriation: For transfer to the Motor Vehicle
\$9,138,000		Account—State
(16) Multimodal Transportation Account—State		\$950,000
Appropriation: For transfer to the Complete Streets	(24) Puget Sound Ferry Operations Account—State	
Grant Program Account—State		Appropriation: For transfer to the Puget Sound
\$14,670,000		Capital Construction Account—State
(17) Multimodal Transportation Account—State		\$35,000,000
Appropriation: For transfer to the Freight Mobility	(25) Connecting Washington Account—State	
Multimodal Account—State		Appropriation: For transfer to the Motor Vehicle
\$4,011,000		Account—State
(18) Multimodal Transportation Account—State		\$100,000,000
Appropriation: For transfer to the Pilotage	(26) (a) General Fund Account—State	
Account—State		Appropriation: For transfer to the State Patrol
\$1,500,000		Highway Account—State
(19) Multimodal Transportation Account—State		\$625,000
Appropriation: For transfer to the Puget Sound	(b) The state treasurer shall transfer the funds only after receiving notification from the Washington state patrol under section 207(6) of this act.	
Capital Construction Account—State	NEW SECTION. Sec. 408. FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION	
\$50,000,000		Multimodal Transportation Account—State
(20) Multimodal Transportation Account—State		Appropriation: For distribution to cities and
Appropriation: For transfer to the Regional Mobility		counties
Grant Program Account—State		\$26,786,000
\$27,679,000		Motor Vehicle Account—State
(21) Multimodal Transportation Account—State		Appropriation: For
Appropriation: For transfer to the Rural Mobility		

distribution to cities and counties
\$23,438,000

TOTAL APPROPRIATION \$50,224,000

NEW SECTION. Sec. 409. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR DEBT TO BE PAID BY STATUTORILY PRESCRIBED REVENUE

Toll Facility Bond Retirement
Account—Federal

Appropriation \$199,129,000

Toll Facility Bond Retirement
Account—State

Appropriation \$25,372,000

TOTAL APPROPRIATION \$224,501,000

NEW SECTION. Sec. 410. FOR THE OFFICE OF FINANCIAL MANAGEMENT—AMERICAN RESCUE PLAN ACT REVENUE LOSS DEPOSITS

Coronavirus State Fiscal Recovery
Fund—Federal

Appropriation \$144,134,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation is provided solely for expenditure into accounts in the amounts specified in subsection (2) of this section. These amounts reflect projected revenue losses to state transportation accounts in state fiscal year 2021 relative to revenues collected in state fiscal year 2019 and shall be used to maintain government services pursuant to the federal American rescue plan act of 2021.

(2) The appropriation must be distributed to the following accounts in the amounts designated:

Aeronautics Account—State
\$448,000

Puget Sound Capital Construction
Account—State \$2,101,000

Transportation Partnership Account—
State \$23,016,000

Puget Sound Ferry Operations Account—
State \$55,224,000

Connecting Washington Account—State
\$45,828,000

Special Category C Account—State
\$2,380,000

Transportation 2003 Account (Nickel
Account)—State \$15,137,000

COMPENSATION

NEW SECTION. Sec. 501. COLLECTIVE BARGAINING AGREEMENTS NOT IMPAIRED

Nothing in this act prohibits the expenditure of any funds by an agency or institution of the state for benefits guaranteed by any collective bargaining agreement in effect on the effective date of this section.

NEW SECTION. Sec. 502. COLLECTIVE BARGAINING AGREEMENTS

Sections 503 through 520 of this act represent the results of the 2021-2023 collective bargaining process required under chapters 41.80, 47.64, and 41.56 RCW. Provisions of the collective bargaining agreements contained in sections 503 through 520 of this act are described in general terms. Only major economic terms are included in the descriptions. These descriptions do not contain the complete contents of the agreements. The collective bargaining agreements contained in sections 503 through 520 of this act may also be funded by expenditures from nonappropriated accounts. If positions are funded with lidded grants or dedicated fund sources with insufficient revenue, additional funding from other sources is not provided.

NEW SECTION. Sec. 503. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—OPEIU

An agreement has been reached between the governor and the office and professional employees international union local eight (OPEIU) pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium. In addition, the following positions are not subject to the furlough requirement: Bid administrator, dispatch, dispatch coordinator, and relief positions.

NEW SECTION. Sec. 504. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—FASPAA

An agreement has been reached between the governor and the ferry agents, supervisors, and project administrators

association pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

NEW SECTION. Sec. 505. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—SEIU LOCAL 6

An agreement has been reached between the governor and the service employees international union local 6 pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

NEW SECTION. Sec. 506. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—CARPENTERS

An agreement has been reached between the governor and the Pacific Northwest regional council of carpenters pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

NEW SECTION. Sec. 507. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—METAL TRADES

An agreement has been reached between the governor and the Puget Sound metal trades council through an interest arbitration award pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. The arbitration award imposed and funding is provided to implement a 1.9% general wage decrease from July 1, 2021, through June 30, 2022, and exempted these employees from the furlough requirement.

NEW SECTION. Sec. 508. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MEBA-UL

An agreement has been reached between the governor and the marine engineers' beneficial association unlicensed engine room employees pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include either wage increases or the furlough requirement.

NEW SECTION. Sec. 509. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MEBA-L

An agreement has been reached between the governor and the marine engineers' beneficial association licensed engineer officers pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include either wage increases or the furlough requirement.

NEW SECTION. Sec. 510. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MEBA—PORT ENGINEERS

An agreement has been reached between the governor and the marine engineers' beneficial association port engineers pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

NEW SECTION. Sec. 511. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MM&P MATES

An agreement has been reached between the governor and the masters, mates, and pilots - mates pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which includes a two percent wage increase for second mates and does not include the furlough requirement.

NEW SECTION. Sec. 512. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MM&P MASTERS

An agreement has been reached between the governor and the masters, mates, and pilots - masters pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include either

wage increases or the furlough requirement.

NEW SECTION. Sec. 513. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MM&P WATCH CENTER SUPERVISORS

An agreement has been reached between the governor and the masters, mates, and pilots - watch center supervisors pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs only for the following positions: Fleet facility security officers and workforce development leads.

NEW SECTION. Sec. 514. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—IBU

An agreement has been reached between the governor and the inlandboatmen's union of the Pacific pursuant to chapter 47.64 RCW through an interest arbitration award for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases, but does include 24 furlough days for employees in positions that do not require the position to be backfilled.

NEW SECTION. Sec. 515. COLLECTIVE BARGAINING AGREEMENT—WFSE

An agreement has been reached between the governor and the Washington federation of state employees under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases, but does include 24 furlough days for employees in position that do not require the position to be backfilled.

NEW SECTION. Sec. 516. COLLECTIVE BARGAINING AGREEMENT—PTE LOCAL 17

An agreement has been reached between the governor and the professional and technical employees local 17 under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases, but does include 24 furlough days for employees in position that do not require the position to be backfilled.

NEW SECTION. Sec. 517. COLLECTIVE BARGAINING AGREEMENT—WPEA

An agreement has not been reached between the governor and the Washington public employees association under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Pursuant to RCW 41.80.010(6), funding is provided for fiscal year 2022 to fund the terms of the 2019-2021 agreement and for fiscal year 2023 to fund the terms according to law.

NEW SECTION. Sec. 518. COLLECTIVE BARGAINING AGREEMENT—COALITION OF UNIONS

An agreement has been reached for the 2019-2021 biennium between the governor and the coalition of unions under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which includes 24 furlough days for employees in position that do not require the position to be backfilled. The agreement includes and funding is provided for a 2.5 percent wage increase for fiscal year 2022 and a 2.5 percent wage increase for fiscal year 2023 for the department of corrections marine vessel operators.

NEW SECTION. Sec. 519. COLLECTIVE BARGAINING AGREEMENT—WSP TROOPERS ASSOCIATION

An agreement has been reached between the governor and the Washington state patrol troopers association under the provisions of chapter 41.56 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include general wages increases but does provide the ability to request to reopen the compensation article for the purpose of bargaining base rate of pay for fiscal year 2023.

NEW SECTION. Sec. 520. COLLECTIVE BARGAINING AGREEMENT—WSP LIEUTENANTS AND CAPTAINS ASSOCIATION

An agreement has been reached between the governor and the Washington state patrol lieutenants and captains association under the provisions of chapter 41.56 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include general wages increases but does provide the ability to request to reopen the compensation article for the purpose of bargaining base rate of pay for fiscal year 2023.

NEW SECTION. Sec. 521. COMPENSATION—REPRESENTED EMPLOYEES—HEALTH CARE—COALITION—INSURANCE BENEFITS

An agreement was reached for the 2021-2023 biennium between the governor and the health care coalition under the provisions of chapter 41.80 RCW. Appropriations in this act for state agencies, including institutions of higher education, are sufficient to implement the provisions of the 2021-2023 collective bargaining agreement, which maintains the provisions of the 2019-2021 agreement, and are subject to the following conditions and limitations:

The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, shall not exceed \$988 per eligible employee for fiscal year 2022. For fiscal year 2023, the monthly employer funding rate shall not exceed \$1018 per eligible employee.

The board shall collect a \$25 per month surcharge payment from members who use tobacco products and a surcharge payment of not less than \$50 per month from members who cover a spouse or domestic partner where the spouse or domestic partner has chosen not to enroll in another employer-based group health insurance that has benefits and premiums with an actuarial value of not less than 95 percent of the actuarial value of the public employees' benefits board plan with the largest enrollment. The surcharge payments shall be collected in addition to the member premium payment if directed by the legislature.

NEW SECTION. Sec. 522. COMPENSATION—REPRESENTED EMPLOYEES OUTSIDE HEALTH CARE COALITION—INSURANCE BENEFITS

Appropriations for state agencies in this act are sufficient for represented employees outside the coalition for health benefits, and are subject to the following conditions and limitations: The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, may not exceed \$988 per eligible employee for fiscal year 2022. For fiscal year 2023, the monthly employer funding rate may not exceed \$1018 per eligible employee.

NEW SECTION. Sec. 523. COMPENSATION—NONREPRESENTED EMPLOYEES—INSURANCE BENEFITS

Appropriations for state agencies in this act are sufficient for

nonrepresented state employee health benefits for state agencies, including institutions of higher education, and are subject to the following conditions and limitations: The employer monthly funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, shall not exceed \$988 per eligible employee for fiscal year 2022. For fiscal year 2023, the monthly employer funding rate shall not exceed \$1018 per eligible employee.

NEW SECTION. Sec. 524. COMPENSATION—REVISE PENSION CONTRIBUTION RATES

The appropriations in this act for school districts and state agencies, including institutions of higher education, are subject to the following conditions and limitations: Appropriations are adjusted to reflect changes to agency appropriations to reflect pension contribution rates adopted by the pension funding council and the law enforcement officers' and firefighters' retirement system plan 2 board.

NEW SECTION. Sec. 525. JUNETEENTH HOLIDAY

Funding is provided within the amounts appropriated for the cost to agencies of additional staff necessary to provide coverage in positions that require continual presence, as a result of implementing chapter . . . (House Bill No. 1016), Laws of 2021 (making Juneteenth a legal holiday). If chapter . . . (House Bill No. 1016), Laws of 2021 is not enacted by June 30, 2021, this section does not take effect.

NEW SECTION. Sec. 526. COLLECTIVE BARGAINING AGREEMENTS—ELIMINATING FURLOUGH DAYS

Appropriations in this act provide sufficient funding to eliminate the furlough days required in the following collective bargaining agreements for the 2021-2023 biennium:

- (1) Office and professional employees international union local 8;
- (2) Ferry agents, supervisors, and project administrators association;
- (3) Service employees international union local 6;
- (4) Pacific Northwest regional council of carpenters;

(5) Marine engineers' beneficial association port engineers;

(6) Masters, mates, and pilots - watch center supervisors;

(7) Inlandboatmen's union of the Pacific;

(8) Washington public employees association general government;

(9) Washington federation of state employees;

(10) Professional and technical employees local 17; and

(11) The coalition of unions.

Expenditure of the amounts provided for this purpose is contingent upon execution of an appropriate memorandum of understanding between the governor or the governor's designee and the exclusive bargaining representative, consistent with the terms of this section.

NEW SECTION. Sec. 527. COLLECTIVE BARGAINING AGREEMENTS—ELIMINATING GENERAL WAGE DECREASE

Appropriations in this act provide sufficient funding solely for the purpose of eliminating the 1.9 percent wage reduction from July 1, 2021, to June 30, 2022, provided in the arbitration award for the Puget Sound metal trades council. Expenditure of the amounts provided for this purpose is contingent upon execution of an appropriate modification of the agreement between the governor or the governor's designee and the exclusive bargaining representative, consistent with the terms of this section.

NEW SECTION. Sec. 528. FORGONE GENERAL WAGE INCREASES

Appropriations in this act for state agencies, including institutions of higher education, are sufficient to provide a three percent or two percent general wage increase, effective July 1, 2021, for employees that were scheduled to receive a general wage increase of either of those amounts on July 1, 2020, that was forgone due to COVID-19 emergency.

IMPLEMENTING PROVISIONS

NEW SECTION. Sec. 601. FUND TRANSFERS

(1) The 2005 transportation partnership projects or improvements and 2015 connecting Washington projects or improvements are listed in the LEAP Transportation Document 2021-1 as

developed March 22, 2021, which consists of a list of specific projects by fund source and amount over a sixteen-year period. Current fiscal biennium funding for each project is a line-item appropriation, while the outer year funding allocations represent a sixteen-year plan. The department of transportation is expected to use the flexibility provided in this section to assist in the delivery and completion of all transportation partnership account and connecting Washington account projects on the LEAP transportation document referenced in this subsection. For the 2019-2021 project appropriations, unless otherwise provided in this act, the director of the office of financial management may provide written authorization for a transfer of appropriation authority between projects funded with transportation partnership account appropriations or connecting Washington account appropriations to manage project spending and efficiently deliver all projects in the respective program under the following conditions and limitations:

(a) Transfers may only be made within each specific fund source referenced on the respective project list;

(b) Transfers from a project may not be made as a result of the reduction of the scope of a project or be made to support increases in the scope of a project;

(c) Transfers from a project may be made if the funds appropriated to the project are in excess of the amount needed in the current fiscal biennium;

(d) Transfers may not occur for projects not identified on the applicable project list;

(e) Transfers to a project may not occur if that project is a programmatic funding item described in broad general terms on the applicable project list without referencing a specific state route number;

(f) Transfers may not be made while the legislature is in session;

(g) Transfers to a project may not be made with funds designated as attributable to practical design savings as described in RCW 47.01.480;

(h) Each transfer between projects may only occur if the director of the office

of financial management finds that any resulting change will not hinder the completion of the projects as approved by the legislature;

(i) Transfers between projects may be made by the department of transportation without the formal written approval provided under this subsection (1), provided that the transfer amount to a single project does not exceed two hundred fifty thousand dollars or ten percent of the total project per biennium, whichever is less. These transfers must be reported quarterly to the director of the office of financial management and the chairs of the house of representatives and senate transportation committees;

(j) Transfers may only be made in fiscal year 2023;

(k) The total amount of transfers to projects in fiscal year 2023 may not exceed \$50,000,000; and

(l) The total amount transferred to a single project may not exceed \$20,000,000.

(2) The department of transportation must submit quarterly all transfers authorized under this section in the transportation executive information system. The office of financial management must maintain a legislative baseline project list identified in the LEAP transportation documents referenced in this act, and update that project list with all authorized transfers under this section, including any effects to the total project budgets and schedules beyond the current biennium.

(3) At the time the department submits a request to transfer funds under this section, a copy of the request must be submitted to the chairs and ranking members of the transportation committees of the legislature.

(4) Before approval, the office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers in a timely manner and address any concerns raised by the chairs and ranking members of the transportation committees.

(5) No fewer than ten days after the receipt of a project transfer request, the director of the office of financial management must provide written

notification to the department of any decision regarding project transfers, with copies submitted to the transportation committees of the legislature.

(6) The department must submit annually as part of its budget submittal a report detailing all transfers made pursuant to this section, including any effects to the total project budgets and schedules beyond the current biennium.

NEW SECTION. Sec. 602. BOND REIMBURSEMENT

To the extent that any appropriation authorizes expenditures of state funds from the motor vehicle account, special category C account, Tacoma Narrows toll bridge account, transportation 2003 account (nickel account), transportation partnership account, transportation improvement account, Puget Sound capital construction account, multimodal transportation account, state route number 520 corridor account, connecting Washington account, or other transportation capital project account in the state treasury for a state transportation program that is specified to be funded with proceeds from the sale of bonds authorized in chapter 47.10 RCW, the legislature declares that any such expenditures made before the issue date of the applicable transportation bonds for that state transportation program are intended to be reimbursed from proceeds of those transportation bonds in a maximum amount equal to the amount of such appropriation.

NEW SECTION. Sec. 603. BELATED CLAIMS

The agencies and institutions of the state may expend moneys appropriated in this act, upon approval of the office of financial management, for the payment of supplies and services furnished to the agency or institution in prior fiscal biennia.

NEW SECTION. Sec. 604. REAPPROPRIATIONS REPORTING

(1) As part of its 2020 supplemental budget submittal, the department of transportation shall provide a report to the legislature and the office of financial management that:

(a) Identifies, by capital project, the amount of state funding that has been reappropriated from the 2017-2019 fiscal biennium into the 2019-2021 fiscal biennium; and

(b) Identifies, for each project, the amount of cost savings or increases in funding that have been identified as compared to the 2017 enacted omnibus transportation appropriations act.

(2) As part of the agency request for capital programs, the department shall load reappropriations separately from funds that were assumed to be required for the 2019-2021 fiscal biennium into budgeting systems.

NEW SECTION. Sec. 605. WEB SITE REPORTING REQUIREMENTS

(1) The department of transportation shall post on its web site every report that is due from the department to the legislature during the 2019-2021 fiscal biennium on one web page. The department must post both completed reports and planned reports on a single web page.

(2) The department shall provide a web link for each change order that is more than five hundred thousand dollars on the affected project web page.

NEW SECTION. Sec. 606. TRANSIT, BICYCLE, AND PEDESTRIAN ELEMENTS REPORTING

(1) By November 15th of each year, the department of transportation must report on amounts expended to benefit transit, bicycle, or pedestrian elements within all connecting Washington projects in programs I, P, and Z identified in LEAP Transportation Document 2021-2 ALL PROJECTS as developed March 22, 2021. The report must address each modal category separately and identify if eighteenth amendment protected funds have been used and, if not, the source of funding.

(2) To facilitate the report in subsection (1) of this section, the department of transportation must require that all bids on connecting Washington projects include an estimate on the cost to implement any transit, bicycle, or pedestrian project elements.

NEW SECTION. Sec. 607. PROJECT SCOPE CHANGES

(1) During the 2019-2021 fiscal biennium, while the legislature is not in session, the director of the office of financial management may approve project scope change requests to connecting Washington projects in the highway improvements program, provided that the requests meet the criteria outlined in RCW 47.01.480 and are subject to the limitations in this section.

(2) At the time the department of transportation submits a request for a project scope change under this section, a copy of the request must be submitted to the transportation committees of the legislature.

(3) Before approval, the office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested project scope changes.

(4) No fewer than ten days after the receipt of a scope change request, the director of the office of financial management must provide written notification to the department of any decision regarding project scope changes, with copies submitted to the transportation committees of the legislature.

(5) As part of its annual budget submittal, the department of transportation must report on all approved scope change requests from the prior year, including a comparison of the scope before and after the requested change.

NEW SECTION. Sec. 608. TOLL CREDITS

The department of transportation may provide up to three million dollars in toll credits to Kitsap transit for its role in passenger-only ferry service and ferry corridor-related projects. The number of toll credits provided must be equal to, but no more than, the number sufficient to meet federal match requirements for grant funding for passenger-only ferry service, but must not exceed the amount authorized in this section.

MISCELLANEOUS 2021-2023 FISCAL BIENNIUM

NEW SECTION. Sec. 701. INFORMATION TECHNOLOGY OVERSIGHT

(1) Agencies must apply to the office of financial management and the office of the state chief information officer for approval before beginning a project or proceeding with each discrete stage of a project subject to this section. At each stage, the office of the state chief information officer must certify that the project has an approved technology budget and investment plan, complies with state information technology and security requirements, and other policies defined by the office of the state chief

information officer. The office of financial management must notify the fiscal committees of the legislature of the receipt of each application and may not approve a funding request for ten business days from the date of notification.

(2)(a) Each project must have a technology budget. The technology budget must have the detail by fiscal month for the 2021-2023 fiscal biennium. The technology budget must use a method similar to the state capital budget, identifying project costs, each fund source, and anticipated deliverables through each stage of the entire project investment and across fiscal periods and biennia from project onset through implementation and close out, as well as at least five years of maintenance and operations costs.

(b) As part of the development of a technology budget and at each request for funding, the agency shall submit an updated technology budget, if changes occurred, to include detailed financial information to the office of financial management and the office of the chief information officer. The technology budget must describe the total cost of the project by fiscal month to include and identify:

- (i) Fund sources;
- (ii) Full-time equivalent staffing level to include job classification assumptions;
- (iii) Discrete financial budget codes to include at least the appropriation index and program index;
- (iv) Object and subobject codes of expenditures;
- (v) Anticipated deliverables;
- (vi) Historical budget and expenditure detail by fiscal year; and
- (vii) Maintenance and operations costs by fiscal year for at least five years as a separate worksheet

(c) If a project technology budget changes and a revised technology budget is completed, a comparison of the revised technology budget to the last approved technology budget must be posted to the dashboard, to include a narrative rationale on what changed, why, and how that impacts the project in scope, budget, and schedule.

(3)(a) Each project must have an investment plan that includes:

(i) An organizational chart of the project management team that identifies team members and their roles and responsibilities;

(ii) The office of the chief information officer staff assigned to the project;

(iii) An implementation schedule covering activities, critical milestones, and deliverables at each stage of the project for the life of the project at each agency affected by the project;

(iv) Performance measures used to determine that the project is on time, within budget, and meeting expectations for quality of work product;

(v) Ongoing maintenance and operations cost of the project post implementation and close out delineated by agency staffing, contracted staffing, and service level agreements; and

(vi) Financial budget coding to include at least discrete financial coding for the project.

(4) Projects with estimated costs greater than one hundred million dollars from initiation to completion and implementation may be divided into discrete subprojects as determined by the office of the chief information officer. Each subproject must have a technology budget and investment plan as provided in this section.

(5)(a) The office of the state chief information officer shall maintain an information technology project dashboard that provides updated information each fiscal month on projects subject to this section. This includes, at least:

- (i) Project changes each fiscal month;
- (ii) Noting if the project has a completed market requirements document, and when it was completed;
- (iii) Financial status of information technology projects under oversight;
- (iv) Coordination with agencies;
- (v) Monthly quality assurance reports, if applicable;
- (vi) Monthly office of the chief information officer status reports;

(vii) Historical project budget and expenditures through fiscal year 2021;

(viii) Budget and expenditures each fiscal month;

(ix) Estimated annual maintenance and operations costs by fiscal year; and

(x) Posting monthly project status assessments on scope, schedule, budget, and overall by the:

(A) Office of the chief information officer;

(B) Agency project team; and

(C) Quality assurance vendor, if applicable to the project.

(b) The dashboard must retain a roll up of the entire project cost, including all subprojects, that can display subproject detail. This includes coalition projects that are active.

(6) If the project affects more than one agency:

(a) A separate technology budget and investment plan must be prepared for each agency; and

(b) The dashboard must contain a statewide project technology budget roll up that includes each affected agency at the subproject level.

(7) For any project that exceeds two million dollars in total funds to complete, requires more than one biennium to complete, or is financed through financial contracts, bonds, or other indebtedness:

(a) Quality assurance for the project must report independently to the office of the chief information officer;

(b) The office of the chief information officer must review, and, if necessary, revise the proposed project to ensure it is flexible and adaptable to advances in technology;

(c) The technology budget must specifically identify the uses of any financing proceeds. No more than thirty percent of the financing proceeds may be used for payroll-related costs for state employees assigned to project management, installation, testing, or training;

(d) The agency must consult with the office of the state treasurer during the competitive procurement process to evaluate early in the process whether

products and services to be solicited and the responsive bids from a solicitation may be financed; and

(e) The agency must consult with the contracting division of the department of enterprise services for a review of all contracts and agreements related to the project's information technology procurements.

(8) The office of the chief information officer must evaluate the project at each stage and certify whether the project is planned, managed, and meeting deliverable targets as defined in the project's approved technology budget and investment plan.

(9) The office of the chief information officer may suspend or terminate a project at any time if it determines that the project is not meeting or not expected to meet anticipated performance and technology outcomes. Once suspension or termination occurs, the agency shall unallot any unused funding and shall not make any expenditure for the project without the approval of the office of financial management. The office of the chief information officer must report on July 1st and December 1st each calendar year any suspension or termination of a project in the previous six-month period to the legislative fiscal committees.

(10) The office of the chief information officer, in consultation with the office of financial management, may identify additional projects to be subject to this section, including projects that are not separately identified within an agency budget. The office of the chief information officer must report on July 1st and December 1st each calendar year any additional projects to be subjected to this section that were identified in the previous six-month period to the legislative fiscal committees.

(11) The following transportation projects are subject to the conditions, limitations, and review provided in this section:

(a) For the Washington state patrol: Aerial criminal investigation tools;

(b) For the department of licensing: Website accessibility and usability; and

(c) For the department of transportation: Maintenance management system, land mobile radio system

replacement, new CSC system and operator, PROPEL - WSDOT support of one Washington, and capital systems replacement.

NEW SECTION. Sec. 702. ACQUISITION OF PROPERTIES AND FACILITIES THROUGH FINANCIAL CONTRACTS

The department of transportation is authorized, subject to the conditions in section 305(2) of this act, to enter into a financing contract pursuant to chapter 39.94 RCW through the state treasurer's lease-purchase program for the purposes indicated. The department may use any funds, appropriated or nonappropriated, in not more than the principal amounts indicated, plus financing expenses and required reserves, if any. Expenditures made by the department of transportation for the indicated purposes before the issue date of the authorized financing contract and any certificates of participation therein may be reimbursed from proceeds of the financing contract and any certificates of participation therein to the extent provided in the agency's financing plan approved by the state finance committee.

Sec. 703. RCW 43.19.642 and 2019 c 416 s 703 are each amended to read as follows:

(1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Except as provided in subsection (5) of this section, effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2016, file annual reports with the department of enterprise services documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) By December 1, 2009, the department of enterprise services shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature.

(5) During the (~~(2017-2019 and)~~) 2019-2021 and 2021-2023 fiscal biennia, the Washington state ferries is required to use a minimum of (~~(five)~~) 10 percent biodiesel as compared to total volume of all diesel purchases made by the Washington state ferries for the operation of the Washington state ferries diesel-powered vessels, as long as the price of a (~~(B5-or)~~) B10 biodiesel blend does not exceed the price of conventional diesel fuel by five percent or more.

Sec. 704. RCW 46.20.745 and 2019 c 416 s 704 are each amended to read as follows:

(1) The ignition interlock device revolving account program is created within the department to assist in covering the monetary costs of installing, removing, and leasing an ignition interlock device, and applicable licensing, for indigent persons who are required under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. For purposes of this subsection, "indigent" has the same meaning as in RCW 10.101.010, as determined by the department. During the (~~(2019-2021)~~) 2019-2021 and 2021-2023 fiscal (~~(biennium)~~) biennia, the ignition interlock device revolving account program also includes ignition interlock enforcement work conducted by the Washington state patrol.

(2) A pilot program is created within the ignition interlock device revolving account program for the purpose of monitoring compliance by persons required to use ignition interlock devices and by ignition interlock companies and vendors.

(3) The department, the state patrol, and the Washington traffic safety commission shall coordinate to establish a compliance pilot program that will target at least one county from eastern Washington and one county from western

Washington, as determined by the department, state patrol, and Washington traffic safety commission.

(4) At a minimum, the compliance pilot program shall:

(a) Review the number of ignition interlock devices that are required to be installed in the targeted county and the number of ignition interlock devices actually installed;

(b) Work to identify those persons who are not complying with ignition interlock requirements or are repeatedly violating ignition interlock requirements; and

(c) Identify ways to track compliance and reduce noncompliance.

(5) As part of monitoring compliance, the Washington traffic safety commission shall also track recidivism for violations of RCW 46.61.502 and 46.61.504 by persons required to have an ignition interlock driver's license under RCW 46.20.385 and 46.20.720.

Sec. 705. RCW 47.66.120 and 2019 c 287 s 18 are each amended to read as follows:

(1)(a) Subject to the availability of amounts appropriated for this specific purpose through the 2023-2025 biennium, the department's public transportation division shall establish a green transportation capital grant program. The purpose of the grant program is to aid any transit authority in funding cost-effective capital projects to reduce the carbon intensity of the Washington transportation system, examples of which include: Electrification of vehicle fleets, including battery and fuel cell electric vehicles; modification or replacement of capital facilities in order to facilitate fleet electrification and/or hydrogen refueling; necessary upgrades to electrical transmission and distribution systems; and construction of charging and fueling stations. The department's public transportation division shall identify projects and shall submit a prioritized list of all projects requesting funding to the legislature by December 1st of each even-numbered year.

(b) The department's public transportation division shall select projects based on a competitive process that considers the following criteria:

(i) The cost-effectiveness of the reductions in carbon emissions provided by the project; and

(ii) The benefit provided to transitioning the entire state to a transportation system with lower carbon intensity.

(2) The department's public transportation division must establish an advisory committee to assist in identifying projects under subsection (1) of this section. The advisory committee must include representatives from the department of ecology, the department of commerce, the utilities and transportation commission, and at least one transit authority.

(3) In order to receive green transportation capital grant program funding for a project, a transit authority must provide matching funding for that project that is at least equal to twenty percent of the total cost of the project.

(4) The department's public transportation division must report annually to the transportation committees of the legislature on the status of any grant projects funded by the program created under this section.

(5) For purposes of this section, "transit authority" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county public transportation authority under chapter 36.57 RCW, a metropolitan municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area under RCW 36.57.100, a regional transit authority under chapter 81.112 RCW, or any special purpose district formed to operate a public transportation system.

(6) During the 2021-2023 fiscal biennium, the department may provide green transportation capital grant program funding for zero emissions capital transition planning projects.

Sec. 706. RCW 46.68.063 and 2019 c 416 s 712 are each amended to read as follows:

The department of licensing technology improvement and data management account is created in the highway safety fund. All receipts from fees collected under RCW 46.12.630(5) must be deposited into

the account. Expenditures from the account may be used only for investments in technology and data management at the department. During the 2019-2021 (~~biennium~~) and 2021-2023 biennia, the account may also be used for responding to public records requests. Moneys in the account may be spent only after appropriation.

Sec. 707. RCW 46.68.370 and 2019 c 416 s 713 are each amended to read as follows:

The license plate technology account is created in the state treasury. All receipts collected under RCW 46.17.015 must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle (~~(account)~~) fund for any appropriation made to implement the digital license plate system. During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the license plate technology account to the highway safety (~~(account-[fund])~~) fund such amounts as reflect the excess fund balance of the license plate technology account. During the 2019-2021 (~~biennium~~) and 2021-2023 biennia, the account may also be used for the maintenance of recently modernized information technology systems for vehicle registrations.

Sec. 708. RCW 46.68.300 and 2019 c 416 s 714 are each amended to read as follows:

The freight mobility investment account is hereby created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for freight mobility projects that have been approved by the freight mobility strategic investment board in RCW 47.06A.020 and may include any principal and interest on bonds authorized for the projects or improvements. During the (~~2019-2021~~) 2021-2023 fiscal biennium, the expenditures from the account may also be used for the administrative expenses of the freight mobility strategic investment board.

NEW SECTION. Sec. 709. (1) The agency financial transaction account is created in the state treasury. Designated receipts from cost-recovery charges for credit card and other financial transaction fees pursuant to this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for paying credit card and financial transaction fees, and other related costs incurred by state agencies.

(2) This section expires June 30, 2023.

Sec. 710. RCW 47.12.370 and 2003 c 187 s 1 are each amended to read as follows:

(1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, 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)~~) (a) Except as provided in (b) of this subsection, tribal governments shall only be eligible to participate in an exchange agreement if they:

(~~(a)~~) (i) 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)~~) (ii) Agree that the property shall not be placed into trust status.

(b) During the 2021-2023 fiscal biennium, the restrictions in (a) of this subsection do not apply to any exchange agreement with a tribal government for the acquisition of real property required by the department for the SR 167/SR 509 Puget Sound Gateway project.

(3) The conveyances must be by quitclaim deed, or other form of conveyance, 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.

Sec. 711. RCW 47.60.530 and 2017 c 313 s 714 are each amended to read as follows:

(1) The Puget Sound ferry operations account is created in the motor vehicle fund.

(2) The following funds must be deposited into the account:

(a) All moneys directed by law;

(b) All revenues generated from ferry fares; and

(c) All revenues generated from commercial advertising, concessions, parking, and leases as allowed under RCW 47.60.140.

(3) Moneys in the account may be spent only after appropriation.

(4) Expenditures from the account may be used only for the maintenance, administration, and operation of the Washington state ferry system.

(5) During the 2015-2017 fiscal biennium, the legislature may transfer from the Puget Sound ferry operations account to the connecting Washington account such amounts as reflect the excess fund balance of the Puget Sound ferry operations account.

(6) During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the Puget Sound ferry operations account to the connecting Washington account.

(7) During the 2021-23 fiscal biennium, the legislature may transfer from the Puget Sound ferry operations account to the Puget Sound capital construction account such amounts as reflect the excess fund balance of the Puget Sound ferry operations account.

Sec. 712. RCW 47.60.315 and 2019 c 431 s 3 are each amended to read as follows:

(1) The commission shall adopt fares and pricing policies by rule, under

chapter 34.05 RCW, according to the following schedule:

(a) Each year the department shall provide the commission a report of its review of fares and pricing policies, with recommendations for the revision of fares and pricing policies for the ensuing year;

(b) By September 1st of each year, beginning in 2008, the commission shall adopt by rule fares and pricing policies for the ensuing year.

(2) The commission may adopt by rule fares that are effective for more or less than one year for the purposes of transitioning to the fare schedule in subsection (1) of this section.

(3) The commission may increase ferry fares included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(4) The chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities.

(5) ~~((Fare))~~ Except for the 2021-2023 fiscal biennium, fare revenues and other revenues deposited in the Puget Sound ferry operations account created in RCW 47.60.530 may not be used to support the Puget Sound capital construction account created in RCW 47.60.505, unless the support for capital is separately identified in the fare.

(6) The commission may not raise fares until the fare rules contain pricing policies developed under RCW 47.60.290, or September 1, 2009, whichever is later.

(7) The commission shall impose a vessel replacement surcharge of twenty-five cents on every one-way and round-trip ferry fare sold, including multiride and monthly pass fares. This surcharge must be clearly indicated to ferry passengers and drivers and, if possible, on the fare media itself.

(8) Except as provided in subsection (10) of this section, beginning May 1, 2020, the commission shall impose an

additional vessel replacement surcharge in an amount sufficient to fund twenty-five year debt service on one 144-auto hybrid vessel taking into account funds provided in chapter 417, Laws of 2019 or chapter . . . (SSB 5419), Laws of 2019. The department of transportation shall provide to the commission vessel and debt service cost estimates. Information on vessels constructed or purchased with revenue from the surcharges must be publicly posted including, but not limited to, the commission web site.

(9) The vessel replacement surcharges imposed in this section may only be used for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of new ferry vessels.

(10) The commission shall not impose the additional vessel replacement surcharge in subsection (8) of this section if doing so would increase fares by more than ten percent.

Sec. 713. RCW 34.05.350 and 2011 1st sp.s. c 2 s 1 are each amended to read as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, or in an omnibus transportation appropriations act for the 2021-2023 biennium related to setting toll rates, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency,

the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The

agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule.

Sec. 714. RCW 46.68.060 and 2019 c 416 s 705 are each amended to read as follows:

There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which must be deposited all moneys directed by law to be deposited therein. This fund must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to

carry out the purposes set forth in RCW 43.59.010, and chapters 46.72 and 46.72A RCW. During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the highway safety fund to the Puget Sound ferry operations account, the motor vehicle fund, and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. During the ~~((2017-2019 and the))~~ 2019-2021 and 2021-2023 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the highway safety fund to the multimodal transportation account.

Sec. 715. RCW 46.68.325 and 2019 c 416 s 708 are each amended to read as follows:

(1) The rural mobility grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.100.

(2) Beginning September 2011, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the rural mobility grant program account two million five hundred thousand dollars.

(3) During the 2015-2017 fiscal biennium, the legislature may transfer from the rural mobility grant program account to the multimodal transportation account such amounts as reflect the excess fund balance of the rural mobility grant program account.

(4) During the ~~((2017-2019 and the))~~ 2019-2021 and 2021-2023 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the rural mobility grant program account to the multimodal transportation account.

Sec. 716. RCW 47.56.876 and 2019 c 416 s 710 are each amended to read as follows:

A special account to be known as the state route number 520 civil penalties account is created in the state treasury. All state route number 520 bridge replacement and HOV program civil penalties generated from the nonpayment of tolls on the state route number 520 corridor must be deposited into the account, as provided under RCW 47.56.870(4)(b)(vii). Moneys in the

account may be spent only after appropriation. Expenditures from the account may be used to fund any project within the state route number 520 bridge replacement and HOV program, including mitigation. During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the state route number 520 civil penalties account to the state route number 520 corridor account such amounts as reflect the excess fund balance of the state route number 520 civil penalties account. Funds transferred must be used solely for capital expenditures for the state route number 520 bridge replacement and HOV project. During the ~~((2017-2019 and the))~~ 2019-2021 and 2021-2023 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the state route number 520 civil penalties account to the state route number 520 corridor account.

Sec. 717. RCW 47.60.322 and 2019 c 416 s 716 are each amended to read as follows:

(1) The capital vessel replacement account is created in the motor vehicle fund. All revenues generated from the vessel replacement surcharge under RCW 47.60.315(7) and service fees collected by the department of licensing or county auditor or other agent appointed by the director under RCW 46.17.040, 46.17.050, and 46.17.060 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the construction or purchase of ferry vessels and to pay the principal and interest on bonds authorized for the construction or purchase of ferry vessels. However, expenditures from the account must first be used to support the construction or purchase, including any applicable financing costs, of a ferry vessel with a carrying capacity of at least one hundred forty-four cars.

(2) The state treasurer may transfer moneys from the capital vessel replacement account to the transportation 2003 account (nickel account) for debt service on bonds issued for the construction of 144-car class ferry vessels.

(3) The legislature may transfer from the capital vessel replacement account to the connecting Washington account created under RCW 46.68.395 such amounts as reflect the excess fund balance of the capital vessel replacement account to be

used for ferry terminal construction and preservation.

(4) During the 2019-2021 and 2021-2023 fiscal (~~biennium~~) biennia, the legislature may direct the state treasurer to make transfers of moneys in the capital vessel replacement account to the transportation partnership account.

Sec. 718. RCW 46.68.395 and 2020 c 219 s 707 are each amended to read as follows:

(1) The connecting Washington account is created in the motor vehicle fund. Moneys in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as connecting Washington projects or improvements in a transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements.

(2) Moneys in the connecting Washington account may not be expended on the state route number 99 Alaskan Way viaduct replacement project.

(3) During the 2019-2021 and 2021-2023 fiscal (~~biennium~~) biennia, the legislature may direct the state treasurer to make transfers of moneys in the connecting Washington account to the motor vehicle fund.

2019-2021 FISCAL BIENNIUM

GENERAL GOVERNMENT AGENCIES—OPERATING

Sec. 801. 2019 c 416 s 101 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

Motor Vehicle Account—State	
Appropriation	((\$545,000))
	<u>\$536,000</u>

Sec. 802. 2020 c 219 s 101 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

Motor Vehicle Account—State	
Appropriation	((\$1,419,000))
	<u>\$1,388,000</u>

Multimodal Transportation Account—
State Appropriation \$300,000

Puget Sound Ferry Operations Account—	
State Appropriation	\$121,000

TOTAL	APPROPRIATION
((\$1,840,000))	
	<u>\$1,809,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$300,000 of the multimodal transportation account—state appropriation is provided solely for the office of financial management, in direct coordination with the office of state treasurer, to evaluate, coordinate, and assist in efforts by state agencies in developing cost recovery mechanisms for credit card and other financial transaction fees currently paid from state funds. This may include disbursing interagency reimbursements for the implementation costs incurred by the affected agencies. As part of the first phase of this effort, the office of financial management, with the assistance of relevant agencies, must develop implementation plans and take all necessary steps to ensure that the actual cost-recovery mechanisms will be in place by January 1, 2020, for the vehicles and drivers programs of the department of licensing. By November 1, 2019, the office of financial management must provide a report to the joint transportation committee on the phase 1 implementation plan and options to expand similar cost recovery mechanisms to other state agencies and programs, including the ferries division.

Sec. 803. 2019 c 416 s 106 (uncodified) is amended to read as follows:

FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

Motor Vehicle Account—State	
Appropriation	((\$652,000))
	<u>\$647,000</u>

TRANSPORTATION AGENCIES—OPERATING

Sec. 901. 2020 c 219 s 201 (uncodified) is amended to read as follows:

FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION

Highway Safety Account—State	
Appropriation	((\$4,675,000))
	<u>\$4,647,000</u>

Highway Safety Account—Federal Appropriation	(\$27,051,000)
	<u>\$26,943,000</u>
Highway Safety Account—Private/Local Appropriation	\$118,000
School Zone Safety Account—State Appropriation	\$850,000
TOTAL	APPROPRIATION
	(\$32,694,000)
	<u>\$32,558,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$150,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter 54, Laws of 2019 (Cooper Jones Active Transportation Safety Council). If chapter 54, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(2) The Washington traffic safety commission may oversee a pilot program in up to three cities implementing the use of automated vehicle noise enforcement cameras in zones that have been designated by ordinance as "Stay Out of Areas of Racing."

(a) Any programs authorized by the commission must be authorized by December 31, ~~((2020))~~ 2022.

(b) If a city has established an authorized automated vehicle noise enforcement camera pilot program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based upon the value of the equipment and services provided or rendered in support of the system.

(c) Any city administering a pilot program overseen by the traffic safety commission shall use the following guidelines to administer the program:

(i) Automated vehicle noise enforcement camera may record photographs or audio of the vehicle and vehicle license plate only while a violation is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(ii) The law enforcement agency of the city or county government shall install two signs facing opposite directions within two hundred feet, or otherwise

consistent with the uniform manual on traffic control devices, where the automated vehicle noise enforcement camera is used that state "Street Racing Noise Pilot Program in Progress";

(iii) Cities testing the use of automated vehicle noise enforcement cameras must post information on the city web site and notify local media outlets indicating the zones in which the automated vehicle noise enforcement cameras will be used;

(iv) A city may only issue a warning notice with no penalty for a violation detected by automated vehicle noise enforcement cameras in a Stay Out of Areas of Racing zone. Warning notices must be mailed to the registered owner of a vehicle within fourteen days of the detected violation;

(v) A violation detected through the use of automated vehicle noise enforcement cameras is not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120;

(vi) Notwithstanding any other provision of law, all photographs, videos, microphotographs, audio recordings, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding. No photograph, microphotograph, audio recording, or electronic image may be used for any purpose other than the issuance of warnings for violations under this section or retained longer than necessary to issue a warning notice as required under this subsection (2); and

(vii) By June 30, 2021, the participating cities shall provide a report to the commission and appropriate committees of the legislature regarding the use, public acceptance, outcomes, warnings issued, data retention and use, and other relevant issues regarding automated vehicle noise enforcement cameras demonstrated by the pilot projects.

(3) The Washington traffic safety commission may oversee a demonstration project in one county, coordinating with a public transportation benefit area (PTBA) and the department of transportation, to test the feasibility and accuracy of the use of automated enforcement technology for high

occupancy vehicle (HOV) lane passenger compliance. All costs associated with the demonstration project must be borne by the participating public transportation benefit area. Any photograph, microphotograph, or electronic images of a driver or passengers are for the exclusive use of the PTBA in the determination of whether an HOV passenger violation has occurred to test the feasibility and accuracy of automated enforcement under this subsection and are not open to the public and may not be used in a court in a pending action or proceeding. All photographs, microphotographs, and electronic images must be destroyed after determining a passenger count and no later than the completion of the demonstration project. No warnings or notices of infraction may be issued under the demonstration project.

For purposes of the demonstration project, an automated enforcement technology device may record an image of a driver and passenger of a motor vehicle. The county and PTBA must erect signs marking the locations where the automated enforcement for HOV passenger requirements is occurring.

The PTBA, in consultation with the Washington traffic safety commission, must provide a report to the transportation committees of the legislature with the number of violations detected during the demonstration project, whether the technology used was accurate and any recommendations for future use of automated enforcement technology for HOV lane enforcement by June 30, 2021.

(4)(a) The Washington traffic safety commission shall coordinate with each city that implements a pilot program as authorized in chapter 224, Laws of 2020 (automated traffic safety cameras) or chapter . . . (Substitute Senate Bill No. 5789), Laws of 2020 (automated traffic safety cameras) to provide the transportation committees of the legislature with the following information by June 30, 2021:

(i) The number of warnings and infractions issued to first-time violators under the pilot program;

(ii) The number of warnings and infractions issued to the registered owners of vehicles that are not registered with an address located in the city conducting the pilot program; and

(iii) The frequency with which warnings and infractions are issued on weekdays versus weekend days.

(b) If neither chapter 224, Laws of 2020 nor chapter . . . (Substitute Senate Bill No. 5789), Laws of 2020 is enacted by June 30, 2020, the conditions of this subsection (4) have no force and effect.

Sec. 902. 2020 c 219 s 202 (uncodified) is amended to read as follows:

FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account—State Appropriation	\$1,137,000
Motor Vehicle Account—State Appropriation	(\$2,920,000)
	<u>\$3,042,000</u>
County Arterial Preservation Account—State Appropriation	\$1,677,000
TOTAL APPROPRIATION	(\$5,734,000)
	<u>\$5,856,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$58,000 of the motor vehicle account—state appropriation is provided solely for succession planning and training.

Sec. 903. 2020 c 219 s 204 (uncodified) is amended to read as follows:

FOR THE JOINT TRANSPORTATION COMMITTEE

Motor Vehicle Account—State Appropriation	(\$2,187,000)
	<u>\$2,173,000</u>
Multimodal Transportation Account—State Appropriation	(\$917,000)
	<u>\$895,000</u>
Highway Safety Account—State Appropriation	\$275,000
TOTAL APPROPRIATION	(\$3,379,000)
	<u>\$3,343,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$400,000 of the motor vehicle account—state appropriation and \$50,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to conduct a comprehensive assessment of statewide transportation needs and priorities, and existing and potential transportation funding mechanisms to address those needs and priorities. The assessment must include: (a) Recommendations on the critical state and local transportation projects, programs, and services needed to achieve an efficient, effective, statewide transportation system over the next ten years; (b) a comprehensive menu of funding options for the legislature to consider to address the identified transportation system investments; (c) recommendations on whether a revision to the statewide transportation policy goals in RCW 47.04.280 is warranted in light of the recommendations and options identified in (a) and (b) of this subsection; and (d) an analysis of the economic impacts of a range of future transportation investments. The assessment must be submitted to the transportation committees of the legislature by June 30, 2020. Starting July 1, 2020, and concluding by December 31, 2020, a committee-appointed commission or panel shall review the assessment and make final recommendations to the legislature for consideration during the 2021 legislative session on a realistic, achievable plan for funding transportation programs, projects, and services over the next ten years including a timeline for legislative action on funding the identified transportation system needs shortfall.

(2) (a) \$382,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to conduct an analysis of the electrification of public fleets in Washington state. The study must include the following:

(i) An inventory of existing public fleets for the state of Washington, counties, a sampling of cities, and public transit agencies. The inventory must differentiate among battery and fuel cell electric vehicles, hybrid vehicles, gasoline powered vehicles, and any other functional categories. Three cities from each of the following population ranges must be selected for the analysis:

(A) Population up to and including twenty-five thousand;

(B) Population greater than twenty-five thousand and up to and including fifty thousand;

(C) Population greater than fifty thousand and up to and including one hundred thousand;

(D) Population greater than one hundred thousand;

(ii) A review of currently available battery and fuel cell electric vehicle alternatives to the vehicle types most commonly used by the state, counties, cities, and public transit agencies. The review must include:

(A) The average vehicle cost differential among the commercially available fuel options;

(B) A cost benefit analysis of the conversion of different vehicle classes; and

(C) Recommendations for the types of vehicles that should be excluded from consideration due to insufficient alternatives, unreliable technology, or excessive cost;

(iii) The projected costs of achieving substantial conversion to battery and/or fuel cell electric fleets by 2025, 2030, and 2035 for the state, counties, cities, and public transit agencies. This cost estimate must include:

(A) Vehicle acquisition costs, charging and refueling infrastructure costs, and other associated costs;

(B) Financial constraints of each type of entity to transition to an electric vehicle fleet; and

(C) Any other identified barriers to transitioning to a battery and/or fuel cell electric vehicle fleet;

(iv) Identification and analysis of financing mechanisms that could be used to finance the transition of publicly owned vehicles to battery and fuel cell electric vehicles. These mechanisms include, but are not limited to: Energy or carbon savings performance contracting, utility grants and rebates, revolving loan funds, state grant programs, private third-party financing, fleet management services, leasing, vehicle use optimization, and vehicle to grid technology; and

(v) The predicted number and location profile of electric vehicle fueling stations needed statewide to provide fueling for the fleets of the state, counties, cities, and public transit agencies.

(b) In developing and implementing the study, the joint transportation committee must solicit input from representatives of the department of enterprise services, the department of transportation, the department of licensing, the department of commerce, the Washington state association of counties, the association of Washington cities, the Washington state transit association, transit agencies, and others as deemed appropriate.

(c) The joint transportation committee must issue a report of its findings and recommendations to the transportation committees of the legislature by September 30, 2020.

(3) (a) \$250,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to conduct a study of the feasibility of an east-west intercity passenger rail system. The study must include the following elements:

(i) Projections of potential ridership;

(ii) Review of relevant planning studies;

(iii) Establishment of an advisory group and associated meetings;

(iv) Development of a Stampede Pass corridor alignment to maximize ridership, revenue, and rationale, considering service to population centers: Auburn, Cle Elum, Yakima, Tri-Cities, Ellensburg, Toppenish, and Spokane;

(v) Assessment of current infrastructure conditions, including station stop locations;

(vi) Identification of equipment needs; and

(vii) Identification of operator options.

(b) A report of the study findings and recommendations is due to the transportation committees of the legislature by June 30, 2020.

(4) (a) \$275,000 of the highway safety fund—state appropriation is for a study of vehicle subagents in Washington state. The study must consider and include recommendations, as necessary, on the following:

(i) The relevant statutes, rules, and/or regulations authorizing vehicle subagents and any changes made to the relevant statutes, rules, and/or regulations;

(ii) The current process of selecting and authorizing a vehicle subagent, including the change of ownership process and the identification of any barriers to entry into the vehicle subagent market;

(iii) The annual business expenditures borne by each of the vehicle subagent businesses since fiscal year 2010 and identification of any materials, including office equipment and supplies, provided by the department of licensing to each vehicle subagent since fiscal year 2010. To accomplish this task, each vehicle subagent must provide expenditure data to the joint transportation committee for the purposes of this study;

(iv) The oversight provided by the county auditors and/or the department of licensing over the vehicle subagent businesses;

(v) The history of service fees, how increases to the service fee rate are made, and how the requested fee increase is determined;

(vi) The online vehicle registration renewal process and any potential improvements to the online process;

(vii) The department of licensing's ability to provide more vehicle licensing services directly, particularly taking into account the increase in online vehicle renewal transactions;

(viii) The potential expansion of services that can be performed by vehicle subagents; and

(ix) The process by which the geographic locations of vehicle subagents are determined.

(b) In conducting the study, the joint transportation committee must consult with the department of licensing, a representative of county auditors, and a representative of vehicle subagents.

(c) The joint transportation committee may collect any data from the department of licensing, county auditors, and vehicle subagents that is necessary to conduct the study.

(d) The joint transportation committee must issue a report of its findings and recommendations to the transportation committees of the legislature by September 30, 2020.

(5) (a) \$235,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to oversee a consultant study on rail safety governance best practices, by class of rail where applicable, and recommendations for the implementation of these best practices in Washington state. The study must assess rail safety governance for passenger and freight rail, including rail transit services, and must consider recommendations made by the national transportation safety board in its 2017 Amtrak passenger train 501 derailment accident report that are relevant to rail safety governance.

(b) The study must include the following components:

(i) (A) An assessment of rail safety oversight in Washington state that includes: (I) The rail safety oversight roles of federal, state, regional, and local agencies, including the extent to which federal and state laws govern these roles and the extent to which these roles would be modified should the suspended federal rules in 49 C.F.R. Part 270 take effect; (II) federal, state, regional, and local agency organizational structures and processes utilized to conduct rail safety oversight; and (III) coordination activities by federal, state, regional, and local agencies in conducting rail safety oversight;

(B) An examination of rail safety governance best practices by other states for the items identified in (a) of this subsection; and

(C) Recommendations for the implementation of best practices for rail safety governance in Washington state.

(ii) The study must address the extent to which additional safety oversight of rail project design and construction is used in other states and would be a recommended best practice for Washington state.

(c) The joint transportation committee shall consult with the Washington state department of transportation, the Washington state utilities and transportation commission, sound transit, the national transportation safety board, Amtrak, the federal railroad administration, BNSF railway company, one or more representatives of short line railroads, one or more representatives of labor, and other entities with rail safety expertise as necessary.

(d) The joint transportation committee must issue a report of its findings and recommendations on rail safety governance to the transportation committees of the legislature by January 6, 2021.

(6) (a) \$250,000 of the motor vehicle account—state appropriation is for the joint transportation committee to conduct a study of the feasibility of a private auto ferry between the state of Washington and British Columbia, Canada. The study must include the following elements:

(i) Expected impacts to ridership, revenue, and expenditures for Washington state ferries;

(ii) Expected impacts to ferry service provided to the San Juan Islands;

(iii) Possible terminal locations on Fidalgo Island;

(iv) Economic impacts to the Anacortes area if ferry service between the area and Vancouver Island ceases;

(v) Economic impacts to the San Juan Islands if ferry service or ferry tourism is reduced;

(vi) Expected impacts to family wage jobs in the marine industry for Washingtonians;

(vii) Expected impacts to ferry fares between the state of Washington and British Columbia, Canada;

(viii) Legal analysis of all state, federal, or Canadian laws or rules, including the Jones act and rules of the board of pilotage commissioners, that may apply to initiation of private service or cessation of state service; and

(ix) Options for encouraging private auto ferry service between the state of Washington and Vancouver Island, Canada.

(b) In conducting the study, the joint transportation committee must consult with the department of transportation, a representative of San Juan county, a representative of the city of Anacortes, a representative of the inland boatman's union, a representative of Puget Sound pilots, a representative of the port of Anacortes, a representative of the economic development alliance of Skagit county, and interested private ferry operators in Washington state.

(c) A report of the study findings and options is due to the transportation committees of the legislature by February 15, 2021.

Sec. 904. 2020 c 219 s 205 (uncodified) is amended to read as follows:

FOR THE TRANSPORTATION COMMISSION

Motor Vehicle Account—State
Appropriation (~~(\$2,324,000)~~)

\$1,861,000

Interstate 405 and State Route Number
167 Express Toll Lanes

Account—State Appropriation
(~~(\$410,000)~~)

\$406,000

State Route Number 520 Corridor
Account—State

Appropriation (~~(\$271,000)~~)

\$262,000

Tacoma Narrows Toll Bridge Account—
State

Appropriation (~~(\$158,000)~~)

\$152,000

Alaskan Way Viaduct Replacement
Project

Account—State Appropriation
(~~(\$136,000)~~)

\$132,000

TOTAL APPROPRIATION
(~~(\$3,299,000)~~)

\$2,813,000

The appropriations in this section are subject to the following conditions and limitations:

(1) (a) The commission shall reconvene the road usage charge steering committee, with the same membership described in

chapter 297, Laws of 2018, and shall report at least once every three months to the steering committee with updates on report development for the completed road usage charge pilot project until the final report is submitted. The commission shall also report to the steering committee on any other activities undertaken in accordance with this subsection (1) as necessary to keep it apprised of new developments and to obtain input on its efforts. The final report on the road usage charge pilot project is due to the transportation committees of the legislature by January 1, 2020, and should include recommendations for necessary next steps to consider impacts to communities of color, low-income households, vulnerable populations, and displaced communities. Any legislative vacancies on the steering committee must be appointed by the speaker of the house of representatives for a house of representatives member vacancy, and by the president of the senate for a senate member vacancy.

(b) (i) The commission shall coordinate with the department of transportation to jointly seek federal funds available through the federal surface transportation system funding alternatives grant program, applying toll credits for meeting match requirements. One or more grant applications shall be developed that propose to:

(A) Create a framework for modeling the effects of a road usage charge on passenger and light-duty vehicles including, but not limited to, plug-in electric vehicles, autonomous vehicles, state fleets, and transportation network companies on a road usage charge system;

(B) Identify and measure potential disparate impacts of a road usage charge on designated populations, including communities of color, low-income households, vulnerable populations, and displaced communities;

(C) Incorporate emerging approaches to mileage reporting, such as in-vehicle telematics, improved smartphone apps, and use of private businesses to provide odometer verification and mileage reporting services, into a road usage charge system;

(D) Conduct a series of facilitated work sessions with other states and private sector firms to identify

opportunities to reduce the cost of collections for a road usage charge;

(E) Develop a road usage charge phase-in plan that incorporates findings from (b) (i) (A) through (D) of this subsection;

(F) Carry out a limited scale demonstration to test new mileage reporting methods; equity policies; cost reduction techniques; and collecting a road usage charge from passenger and light-duty vehicles including, but not limited to, plug-in electric vehicles, autonomous vehicles, state fleets, transportation network companies, and other new mobility services; and

(G) Produce a final report with recommendations and a recommended roadmap that details how a road usage charge could be appropriately scaled to fit state circumstances and that includes a framework for evaluating policy choices related to the use of road usage charge revenue.

(ii) A year-end report on the status of any federally-funded project for which federal funding is secured must be provided to the governor's office and the transportation committees of the legislature by January 1, 2020, and by January 1, 2021.

(c) \$150,000 of the motor vehicle account—state appropriation is provided solely for analysis of potential impacts of a road usage charge on communities of color, low-income households, vulnerable populations, and displaced communities. The analysis must include an assessment of potential mitigation measures to address these potential impacts. These funds must be held in unallotted status during the 2019-2021 fiscal biennium, and may only be used after the commission has provided notice to the office of financial management that it has exhausted all efforts to secure federal funds from the federal surface transportation system funding alternatives grant program under (b) of this subsection without successfully securing federal funding for the further study of a road usage charge. A year-end update on the status of this effort, if undertaken prior to the end of calendar year 2020, must be provided to the governor's office and the transportation committees of the legislature by January 1, 2021.

(2) (a) \$250,000 of the Interstate 405 and state route number 167 express toll

lanes account—state appropriation is provided solely for the transportation commission to conduct a study, applicable to the Interstate 405 express toll lanes, of discounted tolls and other similar programs for low-income drivers that are provided by other states, countries, or other entities and how such a program could be implemented in the state of Washington. The transportation commission may contract with a consultant to conduct all or a portion of this study.

(b) In conducting this study, the transportation commission shall consult with both the department of transportation and the department of social and health services.

(c) The transportation commission shall, at a minimum, consider the following issues when conducting the study of discounted tolls and other similar programs for low-income drivers:

(i) The benefits, requirements, and any potential detriments to the users of a program;

(ii) The most cost-effective way to implement a program given existing financial commitments, shared cost requirements across facilities, and technical requirements to execute and maintain a program;

(iii) The implications of a program for tolling policies, revenues, costs, operations, and enforcement; and

(iv) Any implications to tolled facilities based on the type of tolling implemented on a particular facility.

(d) The transportation commission shall provide a report detailing the findings of this study and recommendations for implementing a discounted toll or other appropriate program in the state of Washington to the transportation committees of the legislature by June 30, 2021.

(3) \$160,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$271,000 of the state route number 520 corridor account—state appropriation, \$158,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$136,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the transportation commission's proportional share of time

spent supporting tolling operations for the respective tolling facilities.

(4) The legislature requests that the commission commence proceedings to name state route number 165 as The Glacier Highway to commemorate the significance of glaciers to the state of Washington.

Sec. 905. 2020 c 219 s 207 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL

State Patrol Highway Account—State Appropriation (~~(\$501,294,000)~~)

\$498,197,000

State Patrol Highway Account—Federal Appropriation (~~(\$16,081,000)~~)

\$16,079,000

State Patrol Highway Account—Private/Local

Appropriation \$4,258,000

Highway Safety Account—State Appropriation \$1,188,000

Ignition Interlock Device Revolving Account—State

Appropriation \$7,010,000

Multimodal Transportation Account—State

Appropriation \$286,000

Interstate 405 and State Route Number 167 Express

Toll Lanes Account—State Appropriation \$1,182,000

State Route Number 520 Corridor Account—State

Appropriation \$1,988,000

Tacoma Narrows Toll Bridge Account—State Appropriation \$1,158,000

Alaskan Way Viaduct Replacement Project

Account—State Appropriation \$996,000

TOTAL APPROPRIATION (~~(\$535,441,000)~~)

\$532,342,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol must be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol.

(2) \$510,000 of the ignition interlock device revolving account—state appropriation is provided solely for the ignition interlock program at the Washington state patrol to provide funding for two staff to work and provide support for the program in working with manufacturers, service centers, technicians, and participants in the program.

(3) \$1,424,000 of the state patrol highway account—state appropriation is provided solely to enter into an agreement for upgraded land mobile software, hardware, and equipment.

(4) \$2,582,000 of the state patrol highway account—state appropriation is provided solely for the replacement of radios and other related equipment.

(5) \$343,000 of the state patrol highway account—state appropriation is provided solely for aerial criminal investigation tools, including software licensing and maintenance, and annual certification.

(6) \$2,342,000 of the state patrol highway account—state appropriation is provided solely to address the increase in the number of toxicology cases from impaired driving and death investigations.

(7) \$580,000 of the state patrol highway account—state appropriation is provided solely for the operation of and administrative support to the license investigation unit to enforce vehicle registration laws in southwestern Washington. The Washington state patrol, in consultation with the department of revenue, shall maintain a running estimate of the additional vehicle registration fees, sales and use taxes, and local vehicle fees remitted to the state pursuant to activity conducted by the license investigation unit.

Beginning October 1, 2019, and quarterly thereafter, the Washington state patrol shall submit a report detailing the additional revenue amounts generated since July 1, 2017, to the director of the office of financial management and the transportation committees of the legislature. At the end of the calendar quarter in which it is estimated that more than \$625,000 in state sales and use taxes have been remitted to the state since July 1, 2017, the Washington state patrol shall notify the state treasurer and the state treasurer shall transfer funds pursuant to section 406, chapter 416, Laws of 2019.

(8) \$18,000 of the state patrol highway account—state appropriation is provided solely for the license investigation unit to procure an additional license plate reader and related costs.

(9) The Washington state patrol and the office of financial management must be consulted by the department of transportation during the design phase of any improvement or preservation project that could impact Washington state patrol weigh station operations. During the design phase of any such project, the department of transportation must estimate the cost of designing around the affected weigh station's current operations, as well as the cost of moving the affected weigh station.

(10) \$4,210,000 of the state patrol highway account—state appropriation is provided solely for a third arming and a third trooper basic training class. The cadet class is expected to graduate in June 2021.

(11) \$65,000 of the state patrol highway account—state appropriation is provided solely for the implementation of chapter 440, Laws of 2019 (immigrants in the workplace). If chapter 440, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(12)(a) The Washington state patrol must report quarterly to the house and senate transportation committees on the status of recruitment and retention activities as follows:

(i) A summary of recruitment and retention strategies;

(ii) The number of transportation funded staff vacancies by major category;

(iii) The number of applicants for each of the positions by these categories;

(iv) The composition of workforce; and

(v) Other relevant outcome measures with comparative information with recent comparable months in prior years.

(b) By January 1, 2020, the Washington state patrol must submit to the transportation committees of the legislature and the governor a workforce diversity plan. The plan must identify ongoing, and both short-term and long-term, specific comprehensive outreach and recruitment strategies to increase populations underrepresented within both commissioned and noncommissioned employee groups.

(13) \$1,182,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$1,988,000 of the state route number 520 corridor account—state appropriation, \$1,158,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$996,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the Washington state patrol's proportional share of time spent supporting tolling operations and enforcement for the respective tolling facilities.

(14) \$100,000 of the state patrol highway account—state appropriation is provided solely for the implementation of (~~Senate Bill No. 6218~~) chapter 97, Laws of 2020 (Washington state patrol retirement definition of salary), which reflects an increase in the Washington state patrol retirement system pension contribution rate of 0.15 percent for changes to the definition of salary. If (~~Senate Bill No. 6218~~) chapter 97, Laws of 2020 is not enacted by June 30, 2020, the amount provided in this subsection lapses.

(~~(16)~~) (15) \$975,000 of the state patrol highway account—state appropriation is provided solely for communications officers at the King county public safety answering point.

(~~(17)~~) (16) \$830,000 of the state patrol highway account—state appropriation is provided solely for information technology security enhancements.

(~~(18)~~) (17) \$150,000 of the state patrol highway account is provided solely

for the Washington state patrol to work with the department of enterprise services and office of minority and women's business enterprises to contract for a workforce diversity strategic action plan. The successful consultant must have demonstrated expertise in workforce diversity research and an established record of assisting organizations in implementing diversity initiatives. The plan must include:

(a) Current and past employment data on the composition of the state patrol workforce generally and of its protective service workers;

(b) Research into the reasons for underrepresentation of minorities and women in the state patrol workforce;

(c) Research on best practices for recruiting across the state and from communities historically underrepresented in the Washington state patrol workforce;

(d) Case studies of law enforcement and other agencies that have successfully diversified their workforce; and

(e) A strategic plan with recommendations that will address disparities in the Washington state patrol employment ranks in both commissioned and noncommissioned personnel, with a focus on executive, command, and supervisory employees.

Sec. 906. 2020 c 219 s 208 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING

Marine Fuel Tax Refund Account—State
Appropriation \$34,000

Motorcycle Safety Education Account—
State

Appropriation ~~((\$5,052,000))~~

\$5,023,000

State Wildlife Account—State
Appropriation ~~((\$511,000))~~

\$510,000

Highway Safety Account—State
Appropriation ~~((\$242,965,000))~~

\$221,941,000

Highway Safety Account—Federal
Appropriation \$1,294,000

Motor Vehicle Account—State
Appropriation ~~((\$71,447,000))~~

\$65,416,000

Motor Vehicle Account—Federal
Appropriation \$186,000

Motor Vehicle Account—Private/Local
Appropriation \$10,008,000

Ignition Interlock Device Revolving
Account—State

Appropriation ~~((\$5,779,000))~~

\$4,687,000

Department of Licensing Services
Account—State

Appropriation ~~((\$7,696,000))~~

\$7,685,000

License Plate Technology Account—
State

Appropriation \$4,250,000

Abandoned Recreational Vehicle
Account—State

Appropriation \$2,925,000

Limousine Carriers Account—State
Appropriation \$113,000

Electric Vehicle Account—State
Appropriation \$264,000

DOL Technology Improvement & Data
Management

Account—State Appropriation
\$2,250,000

Agency Financial Transaction Account—
State

Appropriation \$11,903,000

TOTAL APPROPRIATION
~~((\$366,677,000))~~

\$338,489,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$139,000 of the motorcycle safety education account—state appropriation is provided solely for the implementation of chapter 65, Laws of 2019 (motorcycle safety). If chapter 65, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(2) \$25,000 of the motorcycle safety education account—state appropriation, \$4,000 of the state wildlife account—state appropriation, \$1,708,000 of the highway safety account—state

appropriation, \$576,000 of the motor vehicle account—state appropriation, \$22,000 of the ignition interlock device revolving account—state appropriation, and \$28,000 of the department of licensing services account—state appropriation are provided solely for the department to fund the appropriate staff and necessary equipment and software for data management, data analytics, and data compliance activities. The department must, in consultation with the office of the chief information officer, construct a framework with goals for providing better data stewardship and a plan to achieve those goals. The department must provide the framework and plan to the transportation committees of the legislature by December 31, 2019, and an update by May 1, 2020.

(3) Appropriations provided for the cloud continuity of operations project in this section are subject to the conditions, limitations, and review provided in section 701 (~~(of this act)~~), chapter 219, Laws of 2020.

(4) \$24,028,000 of the highway safety account—state appropriation is provided solely for costs necessary to accommodate increased demand for enhanced drivers' licenses and enhanced identicards. The department shall report on a quarterly basis on the use of these funds, associated workload, and information with comparative information with recent comparable months in prior years. The report must include detailed statewide and by licensing service office information on staffing levels, average monthly wait times, the number of enhanced drivers' licenses and enhanced identicards issued/renewed, and the number of primary drivers' licenses and identicards issued/renewed. Within the amounts provided in this subsection, the department shall implement efficiency measures to reduce the time for licensing transactions and wait times including, but not limited to, the installation of additional cameras at licensing service offices that reduce bottlenecks and align with the "keep your customer" initiative.

(5) \$507,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute Senate Bill No. 5419), Laws of 2019 (vehicle service fees) or chapter 417, Laws of 2019 (vehicle service fees). If neither chapter . . . (Substitute Senate Bill No. 5419), Laws of 2019 or chapter 417, Laws of 2019 are

enacted by June 30, 2019, the amount provided in this subsection lapses.

(6) \$25,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 177, Laws of 2019 (San Juan Islands license plate). If chapter 177, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(7) \$24,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 384, Laws of 2019 (Seattle Storm license plate). If chapter 384, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(8) \$65,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter 440, Laws of 2019 (immigrants in the workplace). If chapter 440, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(9) The appropriations in this section assume implementation of additional cost recovery mechanisms to recoup at least \$11,903,000 in credit card and other financial transaction costs as part of charges imposed for driver and vehicle fee transactions beginning January 1, 2020. At the direction of the office of financial management, the department must develop a method of tracking the additional amount of credit card and other financial cost-recovery revenues. In consultation with the office of financial management, the department must notify the state treasurer of these amounts and the state treasurer must deposit these revenues in the agency financial transaction account created in section 717, chapter 416, Laws of 2019 on a quarterly basis.

(10) \$1,281,000 of the department of licensing service account—state appropriation is provided solely for savings from the implementation of chapter 417, Laws of 2019 (vehicle service fees). If chapter 417, Laws of 2019 is enacted by June 30, 2019, the amount provided in this subsection lapses.

(11) \$2,650,000 of the abandoned recreational vehicle disposal account—state appropriation is provided solely for providing reimbursements in accordance with the department's

abandoned recreational vehicle disposal reimbursement program. It is the intent of the legislature that the department prioritize this funding for allowable and approved reimbursements and not to build a reserve of funds within the account.

(12) \$20,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 210, Laws of 2019 (Gold Star license plate). If chapter 210, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(13) \$31,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 262, Laws of 2019 (snow bikes). If chapter 262, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(14) \$24,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 139, Laws of 2019 (Purple Heart license plate). If chapter 139, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(15) \$24,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 278, Laws of 2019 (vehicle and vessel owner information). If chapter 278, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(16) \$600,000 of the highway safety account—state appropriation is provided solely for the department to provide an interagency transfer to the department of social and health services, children's administration division for the purpose of providing driver's license support to a larger population of foster youth than is already served within existing resources. Support services include reimbursement of driver's license issuance costs, fees for driver training education, and motor vehicle liability insurance costs.

(17) The department must place personal and company data elements in separate data fields to allow the department to select discrete data elements when providing information or data to persons or entities outside the department. Pursuant to the restrictions in federal and state law, a person's photo, social security number, or medical information must not be made available

through public disclosure or data being provided under RCW 46.12.630 or 46.12.635.

(18) \$91,000 of the highway safety account—state appropriation is provided solely for the department's costs related to the one Washington project.

(19) (~~(\$1,674,000)~~) \$1,174,000 of the highway safety account—state appropriation is provided solely for communication and outreach activities necessary to inform the public of federally acceptable identification options including, but not limited to, enhanced drivers' licenses and enhanced identicards. The department shall continue the outreach plan that includes informational material that can be effectively communicated to all communities and populations in Washington. To accomplish this work, the department shall contract with an external vendor with demonstrated experience and expertise in outreach and marketing to underrepresented communities in a culturally-responsive fashion.

(20) Due to the passage of chapter 1 (Initiative Measure No. 976), Laws of 2020, the department, working with the office of financial management, shall provide a monthly report on the number of registrations involved and differences between actual collections and collections if the initiative was not subject to a temporary injunction as of December 5, 2019.

(21) The appropriations in this section assume full cost recovery for the administration and collection of a motor vehicle excise tax on behalf of any regional transit authority pursuant to section 706 (~~(of this act)~~), chapter 219, Laws of 2020.

(~~(26)~~) (22) \$107,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter 78, Laws of 2020 (military veterans commercial driver's license waivers) or chapter . . . (Second Substitute Senate Bill No. 5544), Laws of 2020 (military veterans commercial driver's license waivers). If neither chapter 78, Laws of 2020 nor chapter . . . (Second Substitute Senate Bill No. 5544), Laws of 2020 is enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((28))~~ (23) \$114,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter 124, Laws of 2020 (homeless youth identicards) or chapter . . . (Senate Bill No. 6304), Laws of 2020 (homeless youth identicards). If neither chapter 124, Laws of 2020 nor chapter . . . (Senate Bill No. 6304), Laws of 2020 is enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((29))~~ (24) \$24,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 129, Laws of 2020 (Seattle national hockey league special license plate) or chapter . . . (Senate Bill No. 6562), Laws of 2020 (Seattle national hockey league special license plate). If neither chapter 129, Laws of 2020 nor chapter . . . (Senate Bill No. 6562), Laws of 2020 is enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((30))~~ (25) \$14,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute House Bill No. 2723), Laws of 2020 (off-road vehicle enforcement) or chapter . . . (Senate Bill No. 6115), Laws of 2020 (off-road vehicle enforcement). If neither chapter . . . (Engrossed Substitute House Bill No. 2723), Laws of 2020 nor chapter . . . (Senate Bill No. 6115), Laws of 2020 is enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((31))~~ (26) \$105,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 118, Laws of 2020 (tribal vehicles compact) or chapter . . . (Senate Bill No. 6251), Laws of 2020 (tribal vehicles compact). If neither chapter 118, Laws of 2020 nor chapter . . . (Senate Bill No. 6251), Laws of 2020 (tribal vehicles compact) is enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((32))~~ (27) \$57,000 of the state wildlife account—state appropriation is provided solely for the implementation of chapter 148, Laws of 2020 (state wildlife account). If chapter 148, Laws of 2020 is not enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((33))~~ (28) \$19,000 of the motor vehicle account—state appropriation is provided solely for the implementation of

chapter 93, Laws of 2020 (apples special license plate). If chapter 93, Laws of 2020 is not enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((34))~~ (29) \$19,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 239, Laws of 2020 (stolen vehicle check). If chapter 239, Laws of 2020 is not enacted by June 30, 2020, the amount provided in this subsection lapses.

~~((36))~~ (30) \$40,000 of the department of licensing services account—state appropriation is provided solely for the department to report to the governor and chairs of the transportation committees of the legislature by December 1, 2020, with a proposed plan to allow the registered owner of a vehicle, or the registered owner's authorized representative, to voluntarily enter into either a quarterly or monthly payment plan with the department to pay vehicle fees or taxes due at the time of application for renewal vehicle registration. The plan must include: (a) An analysis of the administrative costs associated with allowing the payment plans; (b) the estimated revenue impact by fund or account, including impacts to local governments; and (c) the recommended method to achieve the greatest level of customer payment compliance.

~~((37))~~ (31)(a) Within available resources, and in collaboration with the department of revenue, the department of licensing shall evaluate the effectiveness of chapter 218, Laws of 2017, in improving compliance with state laws relating to the registration of off-road vehicles, including the payment of retail sales and use tax. The department of licensing shall recommend any statutory, administrative, or other changes needed to optimize and further strengthen the compliance, including an implementation timeline and corresponding resource requirements. Among its recommendations, the department of licensing must address potential changes to the process under RCW 46.93.210 by which the department notifies persons whose vehicles may not be properly registered in the state. The department shall submit a report to the governor and the transportation committees of the legislature by December 15, 2020.

(b) If chapter . . . (Engrossed Substitute House Bill No. 2723), Laws of 2020 is enacted by June 30, 2020, this subsection has no force and effect.

Sec. 907. 2020 c 219 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TOLL OPERATIONS AND MAINTENANCE—PROGRAM
B**

State Route Number 520 Corridor
Account—State

Appropriation (~~(\$59,059,000)~~)
\$36,506,000

State Route Number 520 Civil Penalties
Account—State

Appropriation (~~(\$4,145,000)~~)
\$20,231,000

Tacoma Narrows Toll Bridge Account—
State

Appropriation (~~(\$33,806,000)~~)
\$34,075,000

Alaskan Way Viaduct Replacement
Project Account—State

Appropriation (~~(\$21,616,000)~~)
\$19,858,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation (~~(\$27,457,000)~~)
\$23,638,000

TOTAL APPROPRIATION
(~~(\$146,083,000)~~)
\$134,308,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,300,000 of the Tacoma Narrows toll bridge account—state appropriation and \$11,034,000 of the state route number 520 corridor account—state appropriation are provided solely for the purposes of addressing unforeseen operations and maintenance costs on the Tacoma Narrows bridge and the state route number 520 bridge, respectively. The office of financial management shall place the amounts provided in this subsection, which represent a portion of the required minimum fund balance under the policy of

the state treasurer, in unallotted status. The office may release the funds only when it determines that all other funds designated for operations and maintenance purposes have been exhausted.

(2) As long as the facility is tolled, the department must provide quarterly reports to the transportation committees of the legislature on the Interstate 405 express toll lane project performance measures listed in RCW 47.56.880(4). These reports must include:

(a) Information on the travel times and travel time reliability (at a minimum, average and 90th percentile travel times) maintained during peak and nonpeak periods in the express toll lanes and general purpose lanes for both the entire corridor and commonly made trips in the corridor including, but not limited to, northbound from Bellevue to Rose Hill, state route number 520 at NE 148th to Interstate 405 at state route number 522, Bellevue to Bothell (both NE 8th to state route number 522 and NE 8th to state route number 527), and a trip internal to the corridor (such as NE 85th to NE 160th) and similar southbound trips;

(b) A month-to-month comparison of travel times and travel time reliability for the entire corridor and commonly made trips in the corridor as specified in (a) of this subsection since implementation of the express toll lanes and, to the extent available, a comparison to the travel times and travel time reliability prior to implementation of the express toll lanes;

(c) Total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane (i) compared to total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane, on this segment of Interstate 405 prior to implementation of the express toll lanes and (ii) compared to total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane, from month to month since implementation of the express toll lanes; and

(d) Underlying congestion measurements, that is, speeds, that are being used to generate the summary graphs

provided, to be made available in a digital file format.

(3)(a) \$2,114,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$4,920,000 of the state route number 520 corridor account—state appropriation, \$2,116,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$2,776,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the department to finish implementing a new tolling customer service toll collection system, and are subject to the conditions, limitations, and review provided in section 701 (~~of this act~~), chapter 219, Laws of 2020.

(b) The department shall continue to work with the office of financial management, office of the chief information officer, and the transportation committees of the legislature on the project management plan that includes a provision for independent verification and validation of contract deliverables from the successful bidder and a provision for quality assurance that includes reporting independently to the office of the chief information officer on an ongoing basis during system implementation.

(4) The department shall make detailed quarterly reports to the transportation committees of the legislature and the public on the department's web site on the following:

(a) The use of consultants in the tolling program, including the name of the contractor, the scope of work, the type of contract, timelines, deliverables, any new task orders, and any extensions to existing consultant contracts;

(b) The nonvendor costs of administering toll operations, including the costs of staffing the division, consultants, and other personal service contracts required for technical oversight and management assistance, insurance, payments related to credit card processing, transponder purchases and inventory management, facility operations and maintenance, and other miscellaneous nonvendor costs;

(c) The vendor-related costs of operating tolled facilities, including the costs of the customer service center,

cash collections on the Tacoma Narrows bridge, electronic payment processing, and toll collection equipment maintenance, renewal, and replacement;

(d) The toll adjudication process, including a summary table for each toll facility that includes:

(i) The number of notices of civil penalty issued;

(ii) The number of recipients who pay before the notice becomes a penalty;

(iii) The number of recipients who request a hearing and the number who do not respond;

(iv) Workload costs related to hearings;

(v) The cost and effectiveness of debt collection activities; and

(vi) Revenues generated from notices of civil penalty; and

(e) A summary of toll revenue by facility on all operating toll facilities and express toll lane systems, and an itemized depiction of the use of that revenue.

(5) (~~(\$24,735,000)~~) \$20,914,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for operational costs related to the express toll lane facility.

(6) In calendar year 2021, toll equipment on the Tacoma Narrows Bridge will have reached the end of its operational life. During the 2019-2021 fiscal biennium, the department plans to issue a request for proposals as the first stage of a competitive procurement process that will replace the toll equipment and select a new tolling operator for the Tacoma Narrows Bridge. The request for proposals and subsequent competitive procurement must incorporate elements that prioritize the overall goal of lowering costs per transaction for the facility, such as incentives for innovative approaches which result in lower transactional costs, requests for efficiencies on the part of the bidder that lower operational costs, and incorporation of technologies such as self-serve credit card machines or other point-of-payment technologies that lower costs or improve operational efficiencies.

(7) (~~(\$18,840,000)~~) \$17,082,000 of the Alaskan Way viaduct replacement project account—state appropriation is provided solely for the new state route number 99 tunnel toll facility's expected share of collecting toll revenues, operating customer services, and maintaining toll collection systems. The legislature expects to see appropriate reductions to the other toll facility accounts once tolling on the new state route number 99 tunnel toll facility commences and any previously incurred costs for start-up of the new facility are charged back to the Alaskan Way viaduct replacement project account. The office of financial management shall closely monitor the application of the cost allocation model and ensure that the new state route number 99 tunnel toll facility is adequately sharing costs and the other toll facility accounts are not being overspent or subsidizing the new state route number 99 tunnel toll facility.

(8) \$608,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation are provided solely for increased levels of service from the Washington state patrol for enforcement of toll lane violations on the Interstate 405 and state route number 167 express toll lanes. The department shall compile monthly data on the number of Washington state patrol enforcement hours on each facility and the percentage of time during peak hours that speeds are at or above forty-five miles per hour on each facility. The department shall provide this data in a report to the transportation committees of the legislature on at least a calendar quarterly basis.

(9) The department shall develop an ongoing cost allocation method to assign appropriate costs to each of the toll funds for services provided by each Washington state department of transportation program and all relevant transportation agencies, including the Washington state patrol and the transportation commission. This method should update the toll cost allocation method used in the 2020 supplemental transportation appropriations act. By December 1, 2020, a report with the recommended method and any changes or potential impacts to toll rates shall be submitted to the transportation committees of the legislature and the office of financial management.

Sec. 908. 2020 c 219 s 210 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
INFORMATION TECHNOLOGY—PROGRAM C**

Transportation Partnership Account—
State Appropriation \$1,460,000

Motor Vehicle Account—State
Appropriation (~~(\$96,331,000)~~)

\$93,032,000

Puget Sound Ferry Operations Account—
State

Appropriation \$263,000

Multimodal Transportation Account—
State

Appropriation (~~(\$2,878,000)~~)

\$2,665,000

Transportation 2003 Account (Nickel
Account)—State

Appropriation \$1,460,000

TOTAL APPROPRIATION
(~~(\$102,392,000)~~)

\$98,880,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$8,114,000 of the motor vehicle account—state appropriation is provided solely for the development of the labor system replacement project and is subject to the conditions, limitations, and review provided in section 701 (~~(of this act)~~), chapter 219, Laws of 2020. It is the intent of the legislature that if any portion of the labor system replacement project is leveraged in the future for the time, leave, and labor distribution of any other agencies, the motor vehicle account will be reimbursed proportionally for the development of the system since amounts expended from the motor vehicle account must be used exclusively for highway purposes in conformance with Article II, section 40 of the state Constitution. This must be accomplished through a loan arrangement with the current interest rate under the terms set by the office of the state treasurer at the time the system is deployed to additional agencies. If the motor vehicle account is not reimbursed for future use of the system, it is further the intent of the legislature that reductions will be made to central

service agency charges accordingly. The department shall provide a report to the transportation committees of the legislature by December 31, 2019, detailing the project timeline as of July 1, 2019, an updated project timeline if necessary, expenditures made to date for the purposes of this project, and expenditures projected through the remainder of the project timeline.

(2) \$1,375,000 of the motor vehicle account—state appropriation is provided solely for the department's cost related to the one Washington project.

(3) \$21,500,000 of the motor vehicle account—state appropriation is provided solely for the activities of the information technology program in developing and maintaining information systems that support the operations and program delivery of the department, ensuring compliance with section 701 (~~of this act~~), chapter 219, Laws of 2020, and the requirements of the office of the chief information officer under RCW 43.88.092 to evaluate and prioritize any new financial and capital systems replacement or modernization project and any other information technology project. During the 2019-2021 fiscal biennium, the department may use the distributed direct program support or other cost allocation method to fund a new capital systems replacement or modernization project. The department shall submit a decision package for implementation of a new capital systems replacement project to the governor and the transportation committees of the legislature as part of the normal budget process for the 2021-2023 biennium.

Sec. 909. 2020 c 219 s 211 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
FACILITY MAINTENANCE, OPERATIONS, AND
CONSTRUCTION—PROGRAM D—OPERATING**

Motor Vehicle	Account—State
Appropriation	((34,807,000))
	<u>\$33,819,000</u>
State Route Number 520 Corridor	
Account—State	
Appropriation	\$34,000
TOTAL	APPROPRIATION
	((34,841,000))
	<u>\$33,853,000</u>

Sec. 910. 2020 c 219 s 212 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
AVIATION—PROGRAM F**

Aeronautics	Account—State
Appropriation	((7,743,000))
	<u>\$6,773,000</u>
Aeronautics	Account—Federal
Appropriation	\$3,043,000
Aeronautics	Account—Private/Local
Appropriation	\$60,000
TOTAL	APPROPRIATION
	((10,846,000))
	<u>\$9,876,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) ~~((2,862,000))~~ \$2,505,000 of the aeronautics account—state appropriation is provided solely for the airport aid grant program, which provides competitive grants to public use airports for pavement, safety, maintenance, planning, and security.

(2) ~~((268,000))~~ \$218,000 of the aeronautics account—state appropriation is provided solely for one FTE dedicated to planning aviation emergency services and addressing emerging aeronautics requirements.

(3) \$200,000 of the aeronautics account—state appropriation is provided solely for the department to convene an electric aircraft work group to study the state of the electrically powered aircraft industry and assess infrastructure needs related to the deployment of electric or hybrid-electric aircraft for commercial air travel in Washington state.

(a) The chair of the work group may be a consultant specializing in aeronautics. The work group must include, but is not limited to, representation from the electric aircraft industry, the aircraft manufacturing industry, electric utility districts, the battery industry, the department of commerce, the department of transportation aviation division, the airline pilots association, a primary airport representing an airport association, and the airline industry.

(b) The study must include, but is not limited to:

(i) Infrastructure requirements necessary to facilitate electric aircraft operations at airports;

(ii) Potential economic and public benefits including, but not limited to, the direct and indirect impact on the number of manufacturing and service jobs and the wages from those jobs in Washington state;

(iii) Potential incentives for industry in the manufacturing and operation of electric aircraft for regional air travel;

(iv) Educational and workforce requirements for manufacturing and maintaining electric aircraft;

(v) Demand and forecast for electric aircraft use to include expected timeline of the aircraft entering the market given federal aviation administration certification requirements;

(vi) Identification of up to six airports in Washington state that may benefit from a pilot program once an electrically propelled aircraft for commercial use becomes available; and

(vii) Recommendations to further the advancement of the electrification of aircraft for regional commercial use within Washington state, including specific, measurable goals for the years 2030, 2040, and 2050 that reflect progressive and substantial increases in the utilization of electric and hybrid-electric commercial aircraft.

(c) The work group must submit a report and accompanying recommendations to the transportation committees of the legislature by November 15, 2020.

(4) (~~(\$350,000)~~) \$193,000 of the aeronautics account—state appropriation is provided solely for the implementation of chapter 396, Laws of 2019 (aviation coordinating commission).

(5) Within amounts appropriated in this section, the aviation division of the department shall assist and consult with the department of revenue in their efforts to update the document titled "Washington Action Plan - FAA Policy Concerning Airport Revenue" to reflect changes to Washington tax code regarding hazardous substances. The department of revenue, in consultation with the aviation division of the Washington state

department of transportation, is tasked with developing and recommending a methodology to segregate and track actual amounts collected from the hazardous substance tax under chapter 82.21 RCW and the petroleum products tax under chapter 82.23A RCW as imposed on aviation fuel. The department of revenue is directed to submit a report, including the recommended methodology, to the fiscal committees of the house of representatives and the senate by January 11, 2021.

Sec. 911. 2020 c 219 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
PROGRAM DELIVERY MANAGEMENT AND SUPPORT—
PROGRAM H**

Motor Vehicle Account—State Appropriation	((\$59,788,000))
	<u>\$58,643,000</u>
Motor Vehicle Account—Federal Appropriation	\$500,000
Multimodal Transportation Account— State Appropriation	\$258,000
TOTAL	APPROPRIATION
((\$60,546,000))	
	<u>\$59,401,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The legislature recognizes that the trail known as the Rocky Reach Trail, and its extensions, serve to separate motor vehicle traffic from pedestrians and bicyclists, increasing motor vehicle safety on state route number 2 and the coincident section of state route number 97. Consistent with chapter 47.30 RCW and pursuant to RCW 47.12.080, the legislature declares that transferring portions of WSDOT Inventory Control (IC) No. 2-09-04686 containing the trail and associated buffer areas to the Washington state parks and recreation commission is consistent with the public interest. The legislature directs the department to transfer the property to the Washington state parks and recreation commission.

(a) The department must be paid fair market value for any portions of the transferred real property that is later abandoned, vacated, or ceases to be publicly maintained for trail purposes.

(b) Prior to completing the transfer in this subsection (1), the department must ensure that provisions are made to accommodate private and public utilities and any facilities that predate the department's acquisition of the property, at no cost to those entities. Prior to completing the transfer, the department shall also ensure that provisions, by fair market assessment, are made to accommodate other private and public utilities and any facilities that have been legally allowed by permit or other instrument.

(c) The department may sell any adjoining property that is not necessary to support the Rocky Reach Trail and adjacent buffer areas only after the transfer of trail-related property to the Washington state parks and recreation commission is complete. Adjoining property owners must be given the first opportunity to acquire such property that abuts their property, and applicable boundary line or other adjustments must be made to the legal descriptions for recording purposes.

(2) With respect to Parcel 12 of the real property conveyed by the state of Washington to the city of Mercer Island under that certain quitclaim deed, dated April 19, 2000, recorded in King county under recording no. 20000425001234, the requirement in the deed that the property be used for road/street purposes only will be deemed satisfied by the department of transportation so long as commuter parking, as part of the vertical development of the property, is one of the significant uses of the property.

(3) \$1,600,000 of the motor vehicle account—state appropriation is provided solely for real estate services activities. Consistent with RCW 47.12.120 and during the 2019-2021 fiscal biennium, when initiating, extending, or renewing any rent or lease agreements with a regional transit authority, consideration of value must be equivalent to one hundred percent of economic or market rent.

(4)(a) \$100,000 of the motor vehicle account—state appropriation is provided solely for the department to:

(i) Determine the real property owned by the state of Washington and under the jurisdiction of the department in King county that is surplus property located in an area encompassing south of Dearborn Street in Seattle, south of Newcastle,

west of SR 515, and north of South 216th to SR 515; and

(ii) Use any remaining funds after (a)(i) of this subsection is completed to identify additional real property across the state owned by the state of Washington and under the jurisdiction of the department that is surplus property.

(b) The department shall provide a report to the transportation committees of the legislature describing the properties it has identified as surplus property under (a) of this subsection by October 1, 2020.

Sec. 912. 2020 c 219 s 214 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
PUBLIC-PRIVATE PARTNERSHIPS—PROGRAM K**

Motor Vehicle Account—State
Appropriation \$670,000

Electric Vehicle Account—State
Appropriation (~~(\$2,000,000)~~)

\$100,000

Multimodal Transportation Account—
State Appropriation (~~(\$1,634,000)~~)

\$350,000

TOTAL APPROPRIATION
(~~(\$4,304,000)~~)

\$1,120,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The economic partnerships program must continue to explore retail partnerships at state-owned park and ride facilities, as authorized in RCW 47.04.295.

(2) \$350,000 of the multimodal transportation account—state appropriation is provided solely for the department to execute a transit oriented development pilot project at Kingsgate park and ride in Kirkland intended to be completed by December 31, 2023. The purpose of the pilot project is to demonstrate how appropriate department properties may be used to provide multiple public benefits such as affordable and market rate housing, commercial development, and institutional facilities in addition to transportation purposes. To accomplish the pilot project, the department is

authorized to exercise all legal and administrative powers authorized in statute that may include, but is not limited to, the transfer, lease, or sale of some or all of the property to another governmental agency, public development authority, or nonprofit developer approved by the department and partner agencies. The department may also partner with sound transit, King county, the city of Kirkland, and any other federal, regional, or local jurisdiction on any policy changes necessary from those jurisdictions to facilitate the pilot project. By December 1, 2019, the department must report to the legislature on any legislative actions necessary to facilitate the pilot project and future transit oriented development projects.

(3) ~~((\$2,000,000))~~ \$100,000 of the electric vehicle account—state appropriation is provided solely for the clean alternative fuel vehicle charging and refueling infrastructure program in chapter 287, Laws of 2019 (advancing green transportation adoption).

~~(4) ((\$1,200,000 of the multimodal transportation account—state appropriation is provided solely for the pilot program established under chapter 287, Laws of 2019 (advancing green transportation adoption) to provide clean alternative fuel vehicle use opportunities to underserved communities and low to moderate income members of the workforce not readily served by transit or located in transportation corridors with emissions that exceed federal or state emissions standards.~~

~~(5) \$84,000 of the multimodal transportation account—state appropriation is provided solely for an interagency transfer to the department of commerce for the purpose of conducting a study as described in chapter 287, Laws of 2019 (advancing green transportation adoption) to identify opportunities to reduce barriers to electric vehicle adoption by lower income residents of the state through the use of vehicle and infrastructure financing assistance.~~

~~(6))~~ Building on the information and experience gained from the transit oriented development project at the Kingsgate park and ride, the department must identify a pilot park and ride with future public-private partnership development potential in Pierce county and report back to the transportation committees of the legislature by June 30,

2021, with a proposal for moving forward with a pilot project.

Sec. 913. 2020 c 219 s 215 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M

Motor Vehicle	Account—State
Appropriation	((<u>\$486,514,000</u>))
	<u>\$461,472,000</u>

Motor Vehicle	Account—Federal
Appropriation	\$7,000,000

State Route Number 520	Corridor
Account—State	
Appropriation	((<u>\$4,447,000</u>))
	<u>\$4,422,000</u>

Tacoma Narrows Toll Bridge	Account—State
Appropriation	((<u>\$1,549,000</u>))
	<u>\$1,539,000</u>

Alaskan Way Viaduct Replacement Project	Account—State	Appropriation
	((<u>\$9,537,000</u>))	
	<u>\$8,844,000</u>	

Interstate 405 and State Route Number 167 Express	Account—State
Toll Lanes	Appropriation \$4,528,000

TOTAL	APPROPRIATION
((<u>\$513,575,000</u>))	
<u>\$487,805,000</u>	

The appropriations in this section are subject to the following conditions and limitations:

(1) (a) \$6,170,000 of the motor vehicle account—state appropriation is provided solely for utility fees assessed by local governments as authorized under RCW 90.03.525 for the mitigation of stormwater runoff from state highways. Plan and reporting requirements as required in chapter 435, Laws of 2019 (Local Stormwater Charges) shall be consistent with the January 2012 findings of the Joint Transportation Committee Report for Effective Cost Recovery Structure for WSDOT, Jurisdictions, and Efficiencies in Stormwater Management.

(b) Pursuant to RCW 90.03.525(3), the department and the utilities imposing charges to the department shall negotiate with the goal of agreeing to rates such that the total charges to the department for the 2019-2021 fiscal biennium do not exceed the amount provided in this subsection. The department shall report to the transportation committees of the legislature on the amount of funds requested, the funds granted, and the strategies used to keep costs down, by January 17, 2021. If chapter 435, Laws of 2019 (local stormwater charges) is enacted by June 30, 2019, this subsection (1)(b) does not take effect.

(2) (~~(\$4,447,000)~~) \$4,422,000 of the state route number 520 corridor account—state appropriation is provided solely to maintain the state route number 520 floating bridge. These funds must be used in accordance with RCW 47.56.830(3).

(3) (~~(\$1,549,000)~~) \$1,539,000 of the Tacoma Narrows toll bridge account—state appropriation is provided solely to maintain the new Tacoma Narrows bridge. These funds must be used in accordance with RCW 47.56.830(3).

(4) \$2,050,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely to maintain the Interstate 405 and state route number 167 express toll lanes between Lynnwood and Bellevue, and Renton and the southernmost point of the express toll lanes. These funds must be used in accordance with RCW 47.56.830(3).

(5) \$2,478,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for maintenance for the 2019-2021 fiscal biennium only on the Interstate 405 roadway between Renton and Bellevue.

(6) \$5,000,000 of the motor vehicle account—state appropriation is provided solely for a contingency pool for snow and ice removal. The department must notify the office of financial management and the transportation committees of the legislature when they have spent the base budget for snow and ice removal and will begin using the contingency pool funding.

(7) \$1,025,000 of the motor vehicle account—state appropriation is provided solely for the department to implement safety improvements and debris clean up on department-owned rights-of-way in the

city of Seattle at levels above that being implemented as of January 1, 2019. The department must contract out or hire a crew dedicated solely to collecting and disposing of garbage, clearing debris or hazardous material, and implementing safety improvements where hazards exist to the traveling public, department employees, or people encamped upon department-owned rights-of-way. The department may request assistance from the Washington state patrol as necessary in order for both agencies to provide enhanced safety-related activities regarding the emergency hazards along state highway rights-of-way in the Seattle area.

(8) \$1,015,000 of the motor vehicle account—state appropriation is provided solely for a partnership program between the department and the city of Tacoma. The program shall address the safety and public health problems created by homeless encampments on the department's property along state highways within the city limits. \$570,000 is for dedicated department maintenance staff and associated clean-up costs. The department and the city of Tacoma shall enter into a reimbursable agreement to cover up to \$445,000 of the city's expenses for clean-up crews and landfill costs.

(9) The department must commence a pilot program for the 2019-2021 fiscal biennium at the four highest demand safety rest areas to create and maintain an online calendar for volunteer groups to check availability of weekends for the free coffee program. The calendar must be updated at least weekly and show dates and times that are, or are not, available to participate in the free coffee program. The department must submit a report to the legislature on the ongoing pilot by December 1, 2020, outlining the costs and benefits of the online calendar pilot, and including surveys from the volunteer groups and agency staff to determine its effectiveness.

Sec. 914. 2020 c 219 s 216 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TRAFFIC OPERATIONS—PROGRAM Q—OPERATING**

Motor Vehicle Account—State
Appropriation (~~(\$76,211,000)~~)

\$73,602,000

Motor Vehicle Account—Federal Appropriation	\$2,050,000
Motor Vehicle Account—Private/Local Appropriation	\$250,000
State Route Number 520 Corridor Account—State Appropriation	\$53,000
Tacoma Narrows Toll Bridge Account—State Appropriation	\$31,000
Alaskan Way Viaduct Replacement Project Account—State Appropriation	\$26,000
Interstate 405 and State Route Number 167 Express Toll Lanes Account—State Appropriation	\$32,000
TOTAL APPROPRIATION	<u>(\$78,653,000)</u>
	<u>\$76,044,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$6,000,000 of the motor vehicle account—state appropriation is provided solely for low-cost enhancements. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. By December 15th of each odd-numbered year, the department shall provide a report to the legislature listing all low-cost enhancement projects completed in the prior fiscal biennium.

(2)(a) During the 2019-2021 fiscal biennium, the department shall continue a pilot program that expands private transportation providers' access to high occupancy vehicle lanes. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, the following vehicles must be authorized to use the reserved portion of the highway if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under

chapter 81.66 RCW; and (iv) private employer transportation service vehicles. For purposes of this subsection, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees. Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure.

(b) The department shall expand the high occupancy vehicle lane access pilot program to vehicles that deliver or collect blood, tissue, or blood components for a blood-collecting or distributing establishment regulated under chapter 70.335 RCW. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, blood-collecting or distributing establishment vehicles that are clearly and identifiably marked as such on all sides of the vehicle are considered emergency vehicles and must be authorized to use the reserved portion of the highway.

(c) The department shall expand the high occupancy vehicle lane access pilot program to organ transport vehicles transporting a time urgent organ for an organ procurement organization as defined in RCW 68.64.010. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, organ transport vehicles that are clearly and identifiably marked as such on all sides of the vehicle are considered emergency vehicles and must be authorized to use the reserved portion of the highway.

(d) The department shall expand the high occupancy vehicle lane access pilot program to private, for hire vehicles regulated under chapter 81.72 RCW that have been specially manufactured, designed, or modified for the transportation of a person who has a mobility disability and uses a wheelchair or other assistive device. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, wheelchair-accessible taxicabs that are clearly and identifiably marked as such on all sides of the vehicle are considered public transportation

vehicles and must be authorized to use the reserved portion of the highway.

(e) Nothing in this subsection (2) is intended to exempt these vehicles from paying tolls when they do not meet the occupancy requirements established by the department for express toll lanes.

(3) When regional transit authority construction activities are visible from a state highway, the department shall allow the regional transit authority to place safe and appropriate signage informing the public of the purpose of the construction activity.

(4) The department must make signage for low-height bridges a high priority.

(5) \$32,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$53,000 of the state route number 520 corridor account—state appropriation, \$31,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$26,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the traffic operations program's proportional share of time spent supporting tolling operations for the respective tolling facilities.

Sec. 915. 2020 c 219 s 217 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TRANSPORTATION MANAGEMENT AND SUPPORT—
PROGRAM S**

Motor Vehicle	Account—State
Appropriation	(\$38,251,000)
	<u>\$35,920,000</u>

Motor Vehicle	Account—Federal
Appropriation	\$1,380,000

Motor Vehicle	Account—Private/Local
Appropriation	\$500,000

Multimodal Transportation	Account—State
Appropriation	\$1,129,000

State Route Number 520 Corridor	Account—State
Appropriation	\$199,000

Tacoma Narrows Toll Bridge	Account—State
Appropriation	\$116,000

Alaskan Way Viaduct Replacement	Account—
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State Appropriation	\$100,000
Interstate 405 and State Route Number 167 Express	
Toll Lanes	Account—State
Appropriation	\$119,000
TOTAL	APPROPRIATION
	(\$41,794,000)
	<u>\$39,463,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$2,000,000 of the motor vehicle account—state appropriation is provided solely for a grant program that makes awards for the following: (a) Support for nonprofit agencies, churches, and other entities to help provide outreach to populations underrepresented in the current apprenticeship programs; (b) preapprenticeship training; and (c) child care, transportation, and other supports that are needed to help women, veterans, and minorities enter and succeed in apprenticeship. The department must report on grants that have been awarded and the amount of funds disbursed by December 1st each year. If moneys are provided in the omnibus operating appropriations act for a career connected learning grant program, defined in chapter . . . (Substitute House Bill No. 1336), Laws of 2019, or otherwise, the amount provided in this subsection lapses.

(2) \$150,000 of the motor vehicle account—state appropriation is provided solely for a user-centered and mobile-compatible web site redesign using estimated web site ad revenues.

(3) From the revenues generated by the five dollar per studded tire fee under RCW 46.37.427, \$250,000 of the motor vehicle account—state appropriation is provided solely for the department, in consultation with the appropriate local jurisdictions and relevant stakeholder groups, to establish a pilot media-based public information campaign regarding the damage of studded tire use on state and local roadways in Whatcom county, and to continue the existing pilot information campaign in Spokane county. The reason for the geographic selection of Spokane and Whatcom counties is based on the high utilization of studded tires in these jurisdictions. The public information campaigns must primarily focus on making the consumer aware of the

safety implications for other drivers, road deterioration, financial impact for taxpayers, and, secondarily, the alternatives to studded tires. The Whatcom county pilot media-based public information campaign must begin by September 1, 2020. By January 14, 2021, the department must provide the transportation committees of the legislature an update on the Spokane and Whatcom county pilot media-based public information campaigns.

(4) \$119,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$199,000 of the state route number 520 corridor account—state appropriation, \$116,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$100,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the transportation management and support program's proportional share of time spent supporting tolling operations for the respective tolling facilities.

Sec. 916. 2020 c 219 s 218 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION PLANNING, DATA, AND RESEARCH—PROGRAM T

Interstate 405 and State Route Number 167 Express Toll Lanes

Account—State	Appropriation
(\$3,123,000)	
	<u>\$121,000</u>

Motor Vehicle	Account—State
Appropriation	(\$26,587,000)
	<u>\$24,097,000</u>

Motor Vehicle	Account—Federal
Appropriation	(\$35,385,000)
	<u>\$32,508,000</u>

Motor Vehicle Account—Private/Local
Appropriation \$1,200,000

Multimodal Transportation	Account—
State Appropriation	\$710,000

Multimodal Transportation	Account—
Federal	
Appropriation	\$2,809,000

Multimodal Transportation	Account—
Private/Local	
Appropriation	\$100,000

State Route Number 520 Corridor
Account—State

Appropriation	(\$763,000)
	<u>\$150,000</u>

~~((Tacoma Narrows Toll Bridge Account—
State Appropriation \$121,000~~

~~Alaskan Way Viaduct Replacement
Project Account—~~

State Appropriation	\$104,000))
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TOTAL	APPROPRIATION
(\$70,902,000)	

\$61,695,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$130,000 of the motor vehicle account—state appropriation is provided solely for completion of a corridor study to identify potential improvements between exit 116 and exit 99 of Interstate 5. The study should further develop mid- and long-term strategies from the corridor sketch, and identify potential US 101/I-5 interchange improvements, a strategic plan for the Nisqually River bridges, regional congestion relief options, and ecosystem benefits to the Nisqually River estuary for salmon productivity and flood control.

(2) The study on state route number 518 referenced in section 218(5), chapter 297, Laws of 2018 must be submitted to the transportation committees of the legislature by November 30, 2019.

(3) \$100,000 of the motor vehicle account—state appropriation is provided solely to complete the Tacoma mall direct access feasibility study.

(4) ~~(\$4,600,000)~~ \$672,900 of the motor vehicle account—federal appropriation is provided solely to complete the road usage charge pilot project overseen by the transportation commission using the remaining unspent amount of the federal grant award. The purpose of the road usage charge pilot project is to explore the viability of a road usage charge as a possible replacement for the gas tax.

(5) \$3,000,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for updating the state route number 167 master plan. If chapter

421, Laws of 2019 (addressing tolling) is not enacted by June 30, 2019, the amount provided in this subsection lapses.

(6) \$123,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$207,000 of the state route number 520 corridor account—state appropriation, \$121,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$104,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the transportation planning, data, and research program's proportional share of time spent supporting tolling operations for the respective tolling facilities.

(7) By December 31, 2020, the department shall provide to the governor and the transportation committees of the legislature a report examining the feasibility of doing performance-based evaluations for projects. The department must incorporate feedback from stakeholder groups, including traditionally underserved and historically disadvantaged populations, and the report shall include the project evaluation procedures that would be used for the performance-based evaluation.

(8) (~~(\$556,000)~~) \$150,000 of the state route number 520 corridor account—state appropriation is provided solely for the department to contract with the University of Washington department of mechanical engineering, to study measures to reduce noise impacts from the state route number 520 bridge expansion joints. The field testing shall be scheduled during existing construction, maintenance, or other scheduled closures to minimize impacts. The testing must also ensure safety of the traveling public. The study shall examine testing methodologies and project timelines and costs. A final report must be submitted to the transportation committees of the legislature and the governor by ~~((December 1, 2021))~~ March 1, 2022.

(9) \$5,900,000 of the motor vehicle account—federal appropriation and \$400,000 of the motor vehicle account—private/local appropriation are provided solely for delivery of the department's state planning and research work program and pooled fund research projects, provided that the department may not expend any amounts provided in this section on a long-range plan or corridor scenario analysis for I-5 from Tumwater

to Marysville. This is not intended to reference or impact: The existing I-5 corridor from Mounts road to Tumwater design and operations alternatives analysis; design studies related to HOV lanes or operations; or where it is necessary to continue design and operations analysis related to projects already under development.

(10) \$1,050,000 of the motor vehicle account—federal appropriation is provided solely for the Forward Drive road usage charge research project overseen by the transportation commission using a portion of the amount of the federal grant award. The purpose of the Forward Drive road usage charge research project is to advance research in key policy areas related to road usage charge including assessing impacts of future mobility shifts on road usage charge revenues, conducting an equity analysis, updating and assessing emerging mileage reporting methods, determining opportunities to reduce cost of collection, conducting small-scale pilot tests, and identifying a long-term, detailed phase-in plan.

Sec. 917. 2020 c 219 s 219 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U

Motor Vehicle Account—State
Appropriation (~~(\$79,474,000)~~)

\$86,974,000

Multimodal Transportation Account—
State

Appropriation \$2,833,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation \$122,000

State Route Number 520 Corridor
Account—State

Appropriation \$205,000

Tacoma Narrows Toll Bridge Account—
State

Appropriation \$120,000

Alaskan Way Viaduct Replacement
Project Account—State

Appropriation \$102,000

TOTAL APPROPRIATION
 (~~(\$82,856,000)~~)
\$90,356,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Consistent with existing protocol and practices, for any negotiated settlement of a claim against the state for the department that exceeds five million dollars, the department, in conjunction with the attorney general and the department of enterprise services, shall notify the director of the office of financial management and the transportation committees of the legislature.

(2) Beginning October 1, 2019, and quarterly thereafter, the department, in conjunction with the attorney general and the department of enterprise services, shall provide a report with judgments and settlements dealing with the Washington state ferry system to the director of the office of financial management and the transportation committees of the legislature. The report must include information on: (a) The number of claims and settlements by type; (b) the average claim and settlement by type; (c) defense costs associated with those claims and settlements; and (d) information on the impacts of moving legal costs associated with the Washington state ferry system into the statewide self-insurance pool.

(3) Beginning October 1, 2019, and quarterly thereafter, the department, in conjunction with the attorney general and the department of enterprise services, shall provide a report with judgments and settlements dealing with the nonferry operations of the department to the director of the office of financial management and the transportation committees of the legislature. The report must include information on: (a) The number of claims and settlements by type; (b) the average claim and settlement by type; and (c) defense costs associated with those claims and settlements.

(4) \$122,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$205,000 of the state route number 520 corridor account—state appropriation, \$120,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$102,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided

solely for the charges from other agencies' program's proportional share of supporting tolling operations for the respective tolling facilities.

(5) When the department identifies significant legal issues that have potential transportation budget implications, the department must initiate a briefing for appropriate legislative members or staff through the office of the attorney general and its legislative briefing protocol.

Sec. 918. 2020 c 219 s 220 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V

State Vehicle Parking Account—State
 Appropriation \$784,000

Regional Mobility Grant Program
 Account—State
 Appropriation (~~(\$88,698,000)~~)
\$78,159,000

Rural Mobility Grant Program Account—
 State
 Appropriation \$32,223,000

Multimodal Transportation Account—
 State
 Appropriation (~~(\$122,355,000)~~)
\$122,349,000

Multimodal Transportation Account—
 Federal
 Appropriation \$3,574,000

Multimodal Transportation Account—
 Local
 Appropriation \$100,000

TOTAL APPROPRIATION
 (~~(\$247,734,000)~~)
\$237,189,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$62,698,000 of the multimodal transportation account—state appropriation is provided solely for a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation. Of this amount:

(a) \$14,297,000 of the multimodal transportation account—state appropriation is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers must be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided. Fuel type may not be a factor in the grant selection process.

(b) \$48,401,000 of the multimodal transportation account—state appropriation is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must, to the greatest extent practicable, have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies must be prorated based on the amount expended for demand response service and route deviated service in calendar year 2017 as reported in the "Summary of Public Transportation - 2017" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions. Fuel type may not be a factor in the grant selection process.

(2) \$32,223,000 of the rural mobility grant program account—state appropriation is provided solely for grants to aid small cities in rural areas as prescribed in RCW 47.66.100. Fuel type may not be a factor in the grant selection process.

(3)(a) \$10,539,000 of the multimodal transportation account—state appropriation is provided solely for a vanpool grant program for: (i) Public transit agencies to add vanpools or replace vans; and (ii) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds.

Fuel type may not be a factor in the grant selection process.

(b) At least \$1,600,000 of the amount provided in this subsection must be used for vanpool grants in congested corridors.

(4) \$27,483,000 of the regional mobility grant program account—state appropriation is reappropriated and provided solely for the regional mobility grant projects identified in LEAP Transportation Document ((2020)) 2021-2 ALL PROJECTS as developed March ((11, 2020)) 22, 2021, Program - Public Transportation Program (V).

(5)(a) ((~~\$61,215,000~~)) \$50,676,000 of the regional mobility grant program account—state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document ((2020)) 2021-2 ALL PROJECTS as developed March ((11, 2020)) 22, 2021, Program - Public Transportation Program (V). The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds must be used only to fund projects identified in the LEAP transportation document referenced in this subsection. The department shall provide annual status reports on December 15, 2019, and December 15, 2020, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule. A grantee may not receive more than twenty-five percent of the amount appropriated in this subsection. Additionally, when allocating funding for the 2021-2023 biennium, no more than thirty percent of the total grant program may directly benefit or support one grantee. The department shall not approve any increases or changes to the scope of a project for the purpose of a grantee expending remaining funds on an awarded

grant. Fuel type may not be a factor in the grant selection process.

(b) In order to be eligible to receive a grant under (a) of this subsection during the 2019-2021 fiscal biennium, a transit agency must establish a process for private transportation providers to apply for the use of park and ride facilities. For purposes of this subsection, (i) "private transportation provider" means: An auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and (ii) "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees.

(6) Funds provided for the commute trip reduction (CTR) program may also be used for the growth and transportation efficiency center program.

(7) \$7,670,000 of the multimodal transportation account—state appropriation and \$784,000 of the state vehicle parking account—state appropriation are provided solely for CTR grants and activities. Fuel type may not be a factor in the grant selection process. Of this amount:

(a) \$1,000,000 of the multimodal transportation account—state appropriation is provided solely for the department to continue a pilot transit pass incentive program. Businesses and nonprofit organizations located in a county adjacent to Puget Sound with a population of more than seven hundred thousand that have never offered transit subsidies to employees are eligible to apply to the program for a fifty percent rebate on the cost of employee transit subsidies provided through the regional ORCA fare collection system. No single business or nonprofit organization may receive more than ten thousand dollars from the program.

(i) Businesses and nonprofit organizations may apply and be awarded funds prior to purchasing a transit subsidy, but the department may not provide reimbursement until proof of

purchase or a contract has been provided to the department.

(ii) The department shall update the transportation committees of the legislature on the impact of the program by January 31, 2020, and may adopt rules to administer the program.

(b) \$30,000 of the state vehicle parking account—state appropriation is provided solely for the STAR pass program for state employees residing in Mason and Grays Harbor Counties. Use of the pass is for public transportation between Mason County and Thurston County, and Grays Harbor and Thurston County. The pass may also be used within Grays Harbor County. The STAR pass commute trip reduction program is open to any state employee who expresses intent to commute to his or her assigned state worksite using a public transit system currently participating in the STAR pass program.

(c) \$1,000,000 of the multimodal transportation account—state appropriation is provided solely for a first mile/last mile connections grant program. Eligible grant recipients include cities, businesses, nonprofits, and transportation network companies with first mile/last mile solution proposals. Transit agencies are not eligible. The commute trip reduction board shall develop grant parameters, evaluation criteria, and evaluate grant proposals. The commute trip reduction board shall provide the transportation committees of the legislature a report on the effectiveness of this grant program and best practices for continuing the program.

(8) Except as provided otherwise in this subsection, \$33,370,000 of the multimodal transportation account—state appropriation is provided solely for connecting Washington transit projects identified in LEAP Transportation Document ((2020)) 2021-2 ALL PROJECTS as developed March ((11, 2020)) 22, 2021. It is the intent of the legislature that entities identified to receive funding in the LEAP document referenced in this subsection receive the amounts specified in the time frame specified in that LEAP document. If an entity has already completed a project in the LEAP document referenced in this subsection before the time frame identified, the entity may substitute another transit project or projects that cost a similar or lesser amount.

(9) \$1,000,000 of the multimodal transportation account—state appropriation is provided solely for transit coordination grants. Fuel type may not be a factor in the grant selection process.

(10) The department shall not require more than a ten percent match from nonprofit transportation providers for state grants.

(11) (a) For projects funded as part of the 2015 connecting Washington transportation package listed on the LEAP transportation document identified in subsection (4) of this section, if the department expects to have substantial reappropriations for the 2021-2023 fiscal biennium, the department may, on a pilot basis, apply funding from a project with an appropriation that cannot be used for the current fiscal biennium to advance one or more of the following projects:

(i) King County Metro - RapidRide Expansion, Burien-Delridge (G2000031);

(ii) King County Metro - Route 40 Northgate to Downtown (G2000032);

(iii) Mason Transit Park & Ride Development (G2000042); or

(iv) Pierce Transit - SR 7 Express Service (G2000045).

(b) At least ten business days before advancing a project pursuant to this subsection, the department must notify the office of financial management and the transportation committees of the legislature. The advancement of a project may not hinder the delivery of the projects for which the reappropriations are necessary for the 2021-2023 fiscal biennium.

(c) To the extent practicable, the department shall use the flexibility and authority granted in this section to minimize the amount of reappropriations needed each biennium.

(12) \$750,000 of the multimodal transportation account—state appropriation is provided solely for Intercity Transit for the Dash shuttle program.

(13) (a) \$485,000 of the multimodal transportation account—state appropriation is provided solely for King county for:

(i) An expanded pilot program to provide certain students in the Highline, Tukwila, and Lake Washington school districts with an ORCA card during these school districts' summer vacations. In order to be eligible for an ORCA card under this program, a student must also be in high school, be eligible for free and reduced-price lunches, and have a job or other responsibility during the summer; and

(ii) Providing administrative support to other interested school districts in King county to prepare for implementing similar programs for their students.

(b) King county must provide a report to the department and the transportation committees of the legislature by December 15, 2021, regarding:

(i) The annual student usage of the pilot program;

(ii) Available ridership data;

(iii) A cost estimate, including a detailed description of the various expenses leading to the cost estimate, and any other factors relevant to expanding the program to other King county school districts;

(iv) A cost estimate, including a detailed description of the various expenses leading to the cost estimate, and any other factors relevant to expanding the program to student populations other than high school or eligible for free and reduced-price lunches;

(v) Opportunities for subsidized ORCA cards or local grant or matching funds; and

(vi) Any additional information that would help determine if the pilot program should be extended or expanded.

(14) \$12,000,000 of the multimodal transportation account—state appropriation is provided solely for the green transportation capital grant program established in chapter 287, Laws of 2019 (advancing green transportation adoption).

(15) \$555,000 of the multimodal transportation account—state appropriation is provided solely for an interagency transfer to the Washington State University extension energy program to establish and administer a technical assistance and education

program for public agencies on the use of alternative fuel vehicles.

~~((117))~~ (16) The appropriations in this section include savings due to anticipated project underruns; however, it is unknown which projects will provide savings. The legislature intends to provide sufficient flexibility for the department to manage to this savings target. To provide this flexibility, the office of financial management may authorize, through an allotment modification, reductions in the appropriated amounts that are provided solely for a particular purpose within this section subject to the following conditions and limitations:

(a) No allotment modifications may be made to amounts provided solely for the special needs transportation grant program;

(b) The department must confirm that any modification requested under this subsection of amounts provided solely for a specific purpose are not expected to be used for that purpose in this biennium;

(c) Allotment modifications authorized under this subsection may not result in increased funding for any project beyond the amount provided for that project in the 2019-2021 fiscal biennium in LEAP Transportation Document ~~((2020))~~ 2021-2 ALL PROJECTS as developed March ~~((11, 2020))~~ 22, 2021;

(d) Allotment modifications authorized under this subsection apply only to amounts appropriated in this section from the multimodal transportation account—state; and

(e) By December 1, 2020, the department must submit a report to the transportation committees of the legislature regarding the actions taken under this subsection.

~~((118))~~ (17) (a) The Washington state department of transportation public transportation division, working with the Thurston regional planning council, shall provide state agency management, the office of financial management, and the transportation committees of the legislature with results of their regional mobility grant program demonstration project I-5/US 101 Practical Solutions: State Capitol Campus Transportation Demand Management - Mobile Work. This includes reporting after the 2020 legislative session on the measurable results of an early pilot

initiative, "Telework Tuesday," beginning in January 2020.

(b) Capitol campus state agency management is directed to fully participate in this work, which aims to reduce greenhouse gases, require less office space and parking investments; provide low cost congestion relief on I-5 during peak periods, US 101, and the local transportation network; and improve retention and recruitment of public employees. The agencies should actively: Encourage employees qualified to telework to participate in this program and increase the number of employees who qualify for mobile work and schedule shifts.

(c) If measurable success is achieved, the capitol campus state agencies shall provide options to expand the project to other jurisdictions concentrated with large employers. Expansion and encouragement of telework will help reduce demand on the transportation system, reduce traffic during peak hours, and reduce greenhouse gas emissions.

Sec. 919. 2020 c 219 s 221 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X

Motor Vehicle Account—State
Appropriation \$250,000

Puget Sound Ferry Operations Account—
State

Appropriation ~~((545,997,000))~~
\$487,445,000

Puget Sound Ferry Operations Account—
Federal

Appropriation ~~((7,932,000))~~
\$47,169,000

Puget Sound Ferry Operations Account—
Private/Local

Appropriation \$121,000

TOTAL APPROPRIATION
~~((554,300,000))~~
\$534,985,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The office of financial management budget instructions require agencies to recast enacted budgets into activities.

The Washington state ferries shall include a greater level of detail in its 2019-2021 supplemental and 2021-2023 omnibus transportation appropriations act requests, as determined jointly by the office of financial management, the Washington state ferries, and the transportation committees of the legislature. This level of detail must include the administrative functions in the operating as well as capital programs.

(2) For the 2019-2021 fiscal biennium, the department may enter into a distributor controlled fuel hedging program and other methods of hedging approved by the fuel hedging committee, which must include a representative of the department of enterprise services.

(3) (~~(\$73,161,000)~~) \$67,052,000 of the Puget Sound ferry operations account—state appropriation is provided solely for auto ferry vessel operating fuel in the 2019-2021 fiscal biennium, which reflect cost savings from a reduced biodiesel fuel requirement and, therefore, is contingent upon the enactment of section 703, chapter 416, Laws of 2019. The amount provided in this subsection represents the fuel budget for the purposes of calculating any ferry fare fuel surcharge. The department shall review future use of alternative fuels and dual fuel configurations, including hydrogen.

(4) \$650,000 of the Puget sound ferry operations account—state appropriation is provided solely for increased staffing at Washington ferry terminals to meet increased workload and customer expectations. Within the amount provided in this subsection, the department shall contract with uniformed officers for additional traffic control assistance at the Kingston ferry terminal during peak ferry travel times, with a particular focus on Sundays and holiday weekends. Traffic control methods should include, but not be limited to, holding traffic on the shoulder at Lindvog Road until space opens for cars at the tollbooths and dock, and management of traffic on Highway 104 in order to ensure Kingston residents and business owners have access to businesses, roads, and driveways.

(5) \$254,000 of the Puget Sound ferry operations account—state appropriation is provided solely for a dedicated inventory logistics manager on a one-time basis.

(6) \$500,000 of the Puget Sound ferry operations account—state appropriation is provided solely for operating costs related to moving vessels for emergency capital repairs. Funds may only be spent after approval by the office of financial management.

(7) By January 1, 2020, the ferries division must submit a workforce plan for reducing overtime due to shortages of staff available to fill vacant crew positions. The plan must include numbers of crew positions being filled by staff working overtime, strategies for filling these positions with straight time employees, progress toward implementing those strategies, and a forecast for when overtime expenditures will return to historical averages.

(8) \$160,000 of the Puget Sound ferry operations account—state appropriation is provided solely for a ferry fleet baseline noise study, conducted by a consultant, for the purpose of establishing plans and data-driven goals to reduce ferry noise when Southern resident orca whales are present. In addition, the study must establish prioritized strategies to address vessels serving routes with the greatest exposure to orca whale movements.

(9) (a) \$250,000 of the motor vehicle account—state appropriation is provided solely for the department, in consultation with the Washington state transportation center, to develop a plan for service on the triangle route with a goal of providing maximum sailings moving the most passengers to all stops in the least travel time, including waits between sailings, within budget and resource constraints.

(b) The Washington state transportation center must use new traffic management models and scheduling tools to examine proposed improvements for the triangle route. The department shall report to the standing transportation committees of the legislature by January 15, 2021. The report must include:

(i) Implementation and status of data collection, modeling, scheduling, capital investments, and procedural improvements to allow Washington state ferries to schedule more sailings to and from all stops on the triangle route with minimum time between sailings;

(ii) Recommendations for emergency boat allocations, regular schedule policies, and emergency schedule policies based on all customers alternative travel options to ensure that any dock with no road access is prioritized in scheduling and scheduled service is provided based on population size, demographics, and local medical services;

(iii) Triangle route pilot economic analysis of Washington state ferries fare revenue and fuel cost impact of offering additional, better spaced sailings;

(iv) Results of an economic analysis of the return on investment of potentially acquiring and using traffic control infrastructure, technology, walk on loading bridges, and Good-to-Go and ORCA replacement of current fare sales, validation, collections, accounting, and all associated labor and benefits costs that can be saved via those capital investments; and

(v) Recommendation on policies, procedures, or agency interpretations of statute that may be adopted to mitigate any delays or disruptions to scheduled sailings.

(10) \$15,139,000 of the Puget Sound ferry operations account—state appropriation is provided solely for training. Of the amount provided in this subsection:

(a) \$2,500,000 is for training for new employees.

(b) \$160,000 is for electronic chart display and information system training.

(c) \$379,000 is for marine evacuation slide training.

(11) \$1,600,000 of the Puget Sound ferry operations account—state appropriation is provided solely for naval architecture staff support for the marine maintenance program.

(12) \$336,000 of the Puget Sound ferry operations account—state appropriation is provided solely for inspections of fall restraint systems.

(13) \$4,361,000 of the Puget Sound ferry operations account—state appropriation is provided solely for overtime expenses incurred by engine and deck crew members.

(14) \$1,200,000 of the Puget Sound ferry operations account—state

appropriation is provided solely for familiarization for new assignments of engine crew and terminal staff.

(15) \$100,000 of the Puget Sound ferry operations account—state appropriation is provided solely to develop a plan for upgrading a second vessel to meet the international convention for the safety of life at sea standards. The plan must identify the option with the lowest impacts to sailing schedules.

(16) The department must request reimbursement from the federal transit administration for the maximum amount of ferry operating expenses eligible for reimbursement under federal law.

Sec. 920. 2020 c 219 s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—OPERATING

Multimodal Transportation Account—State

Appropriation ((~~\$70,244,000~~))

\$46,851,000

Multimodal Transportation Account—Private/Local

Appropriation \$717,000

~~((Multimodal Transportation Account—Federal~~

~~Appropriation—\$500,000))~~

TOTAL APPROPRIATION

~~((~~\$71,461,000~~))~~

\$47,568,000

The appropriations in this section are subject to the following conditions and limitations:

(1) (a) (i) \$224,000 of the multimodal transportation account—state appropriation and \$671,000 of the multimodal transportation account—private/local appropriation are provided solely for continued analysis of the ultra high-speed ground transportation corridor in a new study, with participation from Washington, Oregon, and British Columbia. No funds may be expended until the department is in receipt of \$671,000 in private/local funding provided solely for this purpose.

(ii) The ultra high-speed ground transportation corridor advisory group must include legislative membership.

(iii) "Ultra high-speed" means a maximum testing speed of at least two hundred fifty miles per hour.

(b) The study must consist of the following:

(i) Development of proposed corridor governance, general powers, operating structure, legal instruments, and contracting requirements, in the context of the roles of relevant jurisdictions, including federal, state, provincial, and local governments;

(ii) Development of a long-term funding and financing strategy for project initiation, development, construction, and program administration of the high-speed corridor, building on the funding and financing chapter of the 2019 business case analysis and aligned with the recommendations of (b)(i) of this subsection; and

(iii) Development of recommendations for a department-led ultra-high speed corridor engagement plan for policy leadership from elected officials.

(c) This study must build on the results of the 2018 Washington state ultra high-speed ground transportation business case analysis and the 2019 Washington state ultra high-speed ground transportation study findings report. The department shall consult with the transportation committees of the legislature regarding all issues related to proposed corridor governance.

(d) The development work referenced in (b) of this subsection is intended to identify and make recommendations related to specific entities, including interjurisdictional entities, policies, and processes required for the purposes of furthering preliminary analysis efforts for the ultra high-speed ground transportation corridor. This development work is not intended to authorize one or more entities to assume decision making authority for the design, construction, or operation of an ultra high-speed rail corridor.

(e) By December 1, 2020, the department shall provide to the governor and the transportation committees of the legislature a report of the study's findings regarding the three elements noted in this subsection. As applicable, the report should also be sent to the executive and legislative branches of government in the state of Oregon and

appropriate government bodies in the province of British Columbia.

(2) The department is directed to continue to pursue efforts to reduce costs, increase ridership, and review Amtrak Cascades fares and fare schedules. Within thirty days of each annual cost/revenue reconciliation under the Amtrak service contract, the department shall report annual credits to the office of financial management and the legislative transportation committees. Annual credits from Amtrak to the department including, but not limited to, credits due to higher ridership, reduced level of service, and fare or fare schedule adjustments, must be used to offset corresponding amounts of the multimodal transportation account—state appropriation, which must be placed in reserve.

Sec. 921. 2020 c 219 s 223 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
LOCAL PROGRAMS—PROGRAM Z—OPERATING**

Motor Vehicle Account—State Appropriation	((\$12,187,000))
	<u>\$12,441,000</u>
Motor Vehicle Account—Federal Appropriation	\$2,567,000
Multiuse Roadway Safety Account—State Appropriation	\$450,000
Multimodal Transportation Account— State Appropriation	\$350,000
TOTAL	APPROPRIATION
	((\$15,554,000))
	<u>\$15,808,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$350,000 of the multimodal transportation account—state appropriation is provided solely for a study by the Puget Sound regional council of new passenger ferry service to better connect communities throughout the twelve county Puget Sound region. The study must assess potential new routes, identify future terminal locations, and provide recommendations to accelerate the electrification of the ferry fleet. The study must identify future passenger only demand throughout Western

Washington, analyze potential routes and terminal locations on Puget Sound, Lake Washington, and Lake Union with an emphasis on preserving waterfront opportunities in public ownership and opportunities for partnership. The study must determine whether and when the passenger ferry service achieves a net reduction in carbon emissions including an analysis of the emissions of modes that passengers would otherwise have used. The study must estimate capital and operating costs for routes and terminals. The study must include early and continuous outreach with all interested stakeholders and a report to the legislature and all interested parties by January 31, 2021.

(2) \$1,142,000 of the motor vehicle account—state appropriation is provided solely for the department, from amounts set aside out of statewide fuel taxes distributed to counties according to RCW 46.68.120(3), to contract with the Washington state association of counties to:

(a) In coordination with stakeholders, identify county-owned fish passage barriers, with priority given to barriers that share the same stream system as state-owned fish passage barriers. The study must identify, map, and provide a preliminary assessment of county-owned barriers that need correction, and provide, where possible, preliminary costs estimates for each barrier correction. The study must provide recommendations on:

(i) How to prioritize county-owned barriers within the same stream system of state-owned barriers in the current six-year construction plan to maximize state investment; and

(ii) How future state six-year construction plans should incorporate county-owned barriers;

(b) Update the local agency guidelines manual, including exploring alternatives within the local agency guidelines manual on county priorities;

(c) Study the current state of county transportation funding, identify emerging issues, and identify potential future alternative transportation fuel funding sources to meet current and future needs.

(3) The entire multiuse roadway safety account—state appropriation is provided

solely for grants under RCW 46.09.540, subject to the following limitations:

(a) Twenty-five percent of the amounts provided are reserved for counties that each have a population of fifteen thousand persons or less;

(b)(i) Seventy-five percent of the amounts provided are reserved for counties that each have a population exceeding fifteen thousand persons; and

(ii) No county that receives a grant or grants under (b) of this subsection may receive more than sixty thousand dollars in total grants.

(4) \$260,000 of the motor vehicle account—state appropriation is provided solely for the Wahkiakum county ferry operating deficit.

TRANSPORTATION AGENCIES—CAPITAL

Sec. 1001. 2020 c 219 s 301 (uncodified) is amended to read as follows:

FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

Freight Mobility Investment Account—State

Appropriation ~~((23,015,000))~~
\$17,344,000

Highway Safety Account—State
 Appropriation \$81,000

Motor Vehicle Account—State
 Appropriation ~~((4,907,000))~~
\$3,165,000

Freight Mobility Multimodal Account—State

Appropriation ~~((4,992,000))~~
\$4,454,000

Motor Vehicle Account—Federal
 Appropriation \$1,899,000

Freight Mobility Multimodal Account—Private/Local

Appropriation \$1,250,000

TOTAL APPROPRIATION
~~((36,144,000))~~
\$28,193,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as otherwise provided in this section, the entire appropriations in this section are provided solely for the projects by amount, as listed in the LEAP Transportation Document ((2020-3)) 2021-2 ALL PROJECTS as developed March ((11, 2020)) 22, 2021, ((Conference)) Program - FMSIB ((Project List)).

(2) Until directed by the legislature, the board may not initiate a new call for projects. By January 1, 2020, the board must report to the legislature on alternative proposals to revise its project award and obligation process, which result in lower reappropriations.

((4)) (3) It is the intent of the legislature to continue to make strategic investments in a statewide freight mobility transportation system with the help of the freight mobility strategic investment board, including projects that mitigate the impact of freight movement on local communities.

Sec. 1002. 2020 c 219 s 302 (uncodified) is amended to read as follows:

FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account—State Appropriation ((~~\$62,884,000~~))

\$51,184,000

Motor Vehicle Account—State Appropriation \$1,456,000

County Arterial Preservation Account—State

Appropriation \$39,590,000

TOTAL APPROPRIATION ((~~\$103,930,000~~))

\$92,230,000

Sec. 1003. 2020 c 219 s 304 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—FACILITIES—PROGRAM D—(DEPARTMENT OF TRANSPORTATION-ONLY PROJECTS)—CAPITAL

Motor Vehicle Account—State Appropriation ((~~\$51,187,000~~))

\$49,717,000

Connecting Washington Account—State Appropriation ((~~\$51,523,000~~))

\$50,746,000

TOTAL APPROPRIATION ((~~\$102,710,000~~))
\$100,463,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~\$51,523,000~~)) \$50,746,000 of the connecting Washington account—state appropriation is provided solely for a new Olympic region maintenance and administration facility to be located on the department-owned site at the intersection of Marvin Road and 32nd Avenue in Lacey, Washington.

(2) (a) ((~~\$43,297,000~~)) \$41,827,000 of the motor vehicle account—state appropriation is provided solely for the department facility located at 15700 Dayton Ave N in Shoreline. This appropriation is contingent upon the department of ecology signing a not less than twenty-year agreement to pay a share of any financing contract issued pursuant to chapter 39.94 RCW.

(b) Payments from the department of ecology as described in this subsection shall be deposited into the motor vehicle account.

(c) Total project costs are not to exceed \$46,500,000.

(3) \$1,565,000 from the motor vehicle account—state appropriation is provided solely for furniture for the renovated Northwest Region Headquarters at Dayton Avenue. The department must efficiently furnish the renovated building.

Sec. 1004. 2020 c 219 s 305 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I

Transportation Partnership Account—State

Appropriation ((~~\$385,619,000~~))

\$395,725,000

Motor Vehicle Account—State Appropriation ((~~\$102,543,000~~))

\$63,435,000

Motor Vehicle Account—Federal Appropriation ((~~\$151,857,000~~))

\$156,149,000

Motor Vehicle Account—Private/Local
Appropriation (~~(\$70,404,000)~~)

\$64,126,000

State Route Number 520 Corridor
Account—State

Appropriation \$1,000

State Route Number 520 Corridor
Account—Federal

Appropriation \$1,000

Connecting Washington Account—State

Appropriation (~~(\$2,355,205,000)~~)

\$1,631,186,000

Special Category C Account—State
Appropriation (~~(\$36,134,000)~~)

\$19,123,000

Multimodal Transportation Account—
State

Appropriation (~~(\$3,853,000)~~)

\$3,855,000

Alaskan Way Viaduct Replacement
Project Account—State

Appropriation \$77,956,000

Transportation 2003 Account (Nickel
Account)—State

Appropriation (~~(\$10,429,000)~~)

\$9,403,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation (~~(\$90,027,000)~~)

\$33,742,000

TOTAL APPROPRIATION
(~~(\$3,284,027,000)~~)

\$2,454,702,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire connecting Washington account—state appropriation and the entire transportation partnership account—state appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ((2020)) 2021-1 as developed March ((11, 2020)) 22, 2021, Program -

Highway Improvements Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 601 ((of this act)), chapter 219, Laws of 2020.

(2) Except as provided otherwise in this section, the entire motor vehicle account—state appropriation and motor vehicle account—federal appropriation are provided solely for the projects and activities listed in LEAP Transportation Document ((2020)) 2021-2 ALL PROJECTS as developed March ((11, 2020)) 22, 2021, Program - Highway Improvements Program (I). Any federal funds gained through efficiencies, adjustments to the federal funds forecast, additional congressional action not related to a specific project or purpose, or the federal funds redistribution process must then be applied to highway and bridge preservation activities or fish passage barrier corrections (OBI4001).

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act. Ten days prior to any transfer, the department must submit its request to the office of financial management and the transportation committees of the legislature and consider any concerns raised. The department shall submit a report on fiscal year funds transferred in the prior fiscal year using this subsection as part of the department's annual budget submittal.

(4) The connecting Washington account—state appropriation includes up to ((~~(\$1,835,325,000)~~)) \$1,085,325,000 in proceeds from the sale of bonds authorized in RCW 47.10.889.

(5) The special category C account—state appropriation includes up to ((~~(\$24,910,000)~~)) \$19,123,000 in proceeds from the sale of bonds authorized in RCW 47.10.812.

(6) The transportation partnership account—state appropriation includes up to ((~~(\$162,658,000)~~)) \$175,140,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(7) The Alaskan Way viaduct replacement project account—state appropriation includes up to \$77,956,000

in proceeds from the sale of bonds authorized in RCW 47.10.873.

(8) (~~(\$168,757,000)~~) \$162,005,000 of the transportation partnership account—state appropriation, (~~(\$19,790,000)~~) \$17,898,000 of the motor vehicle account—private/local appropriation, \$3,384,000 of the transportation 2003 account (nickel account)—state appropriation, \$77,956,000 of the Alaskan Way viaduct replacement project account—state appropriation, and (~~(\$1,838,000)~~) \$854,000 of the multimodal transportation account—state appropriation are provided solely for the SR 99/Alaskan Way Viaduct Replacement project (809936Z). It is the intent of the legislature that the \$25,000,000 increase in funding provided in the 2021-2023 fiscal biennium be covered by any legal damages paid to the state as a result of a lawsuit related to contractual provisions for construction and delivery of the Alaskan Way viaduct replacement project. The legislature intends that the \$25,000,000 of the transportation partnership account—state funds be repaid when those damages are recovered.

(9) \$3,000,000 of the multimodal transportation account—state appropriation is provided solely for transit mitigation for the SR 99/Viaduct Project - Construction Mitigation project (809940B).

(10) (~~(\$168,655,000)~~) \$148,097,000 of the connecting Washington account—state appropriation, \$1,052,000 of the special category C account—state appropriation, and (~~(\$738,000)~~) \$1,338,000 of the motor vehicle account—private/local appropriation are provided solely for the US 395 North Spokane Corridor project (M00800R).

(11) (~~(\$82,991,000)~~) \$29,187,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for the I-405/SR 522 to I-5 Capacity Improvements project (L2000234) for activities related to adding capacity on Interstate 405 between state route number 522 and Interstate 5, with the goals of increasing vehicle throughput and aligning project completion with the implementation of bus rapid transit in the vicinity of the project.

(12) (a) (~~(\$422,099,000)~~) \$356,007,000 of the connecting Washington account—

state appropriation and (~~(\$456,000)~~) \$400,000 of the motor vehicle account—private/local appropriation are provided solely for the SR 520 Seattle Corridor Improvements - West End project (M00400R).

(b) Recognizing that the department of transportation requires full possession of parcel number 1-23190 to complete the Montlake Phase of the West End project, the department is directed to:

(i) Work with the operator of the Montlake boulevard market located on parcel number 1-23190 to negotiate a lease allowing continued operations up to January 1, 2020. After that time, the department shall identify an area in the vicinity of the Montlake property for a temporary market or other food service to be provided during the period of project construction. Should the current operator elect not to participate in providing that temporary service, the department shall then develop an outreach plan with the city to solicit community input on the food services provided, and then advertise the opportunity to other potential vendors. Further, the department shall work with the city of Seattle and existing permit processes to facilitate vendor access to and use of the area in the vicinity of the Montlake property.

(ii) Upon completion of the Montlake Phase of the West End project (current anticipated contract completion of 2023), WSDOT shall sell that portion of the property not used for permanent transportation improvements and initiate a process to convey that surplus property to a subsequent owner.

(c) \$60,000 of the motor vehicle account—state appropriation is provided solely for grants to nonprofit organizations located in a city with a population exceeding six hundred thousand persons and that empower artists through equitable access to vital expertise, opportunities, and business services. Funds may be used only for the purpose of preserving, commemorating, and sharing the history of the city of Seattle's freeway protests and making the history of activism around the promotion of more integrated transportation and land use planning accessible to current and future generations through the preservation of Bent 2 of the R. H. Thompson freeway ramp.

(13) It is the intent of the legislature that for the I-5 JBLM Corridor Improvements project (M00100R), the department shall actively pursue \$50,000,000 in federal funds to pay for this project to supplant state funds in the future. \$50,000,000 in connecting Washington account funding must be held in unallotted status during the 2021-2023 fiscal biennium. These funds may only be used after the department has provided notice to the office of financial management that it has exhausted all efforts to secure federal funds from the federal highway administration and the department of defense.

(14) (~~(\$310,469,000)~~) \$172,911,000 of the connecting Washington account—state appropriation (~~(+)~~), \$12,599,000 of the motor vehicle account—private/local appropriation, \$2,500,000 of the motor vehicle account—state appropriation, and \$1,500,000 of the motor vehicle account—federal appropriation are provided solely for the SR 167/SR 509 Puget Sound Gateway project (M00600R).

(a) Any savings on the project must stay on the Puget Sound Gateway corridor until the project is complete.

(b) Proceeds from the sale of any surplus real property acquired for the purpose of building the SR 167/SR 509 Puget Sound Gateway (M00600R) project must be deposited into the motor vehicle account for the purpose of constructing the project.

(c) In making budget allocations to the Puget Sound Gateway project, the department shall implement the project's construction as a single corridor investment. The department shall develop a coordinated corridor construction and implementation plan for state route number 167 and state route number 509 in collaboration with affected stakeholders. Specific funding allocations must be based on where and when specific project segments are ready for construction to move forward and investments can be best optimized for timely project completion. Emphasis must be placed on avoiding gaps in fund expenditures for either project.

(d) It is the legislature's intent that the department shall construct a full single-point urban interchange at the junction of state route number 161 (Meridian avenue) and state route number 167 and a full single-point urban interchange at the junction of state

route number 509 and 188th Street. If the department receives additional funds from an outside source for this project after the base project is fully funded, the funds must first be applied toward the completion of these two full single-point urban interchanges.

(e) In designing the state route number 509/state route number 516 interchange component of the SR 167/SR 509 Puget Sound Gateway project (M00600R), the department shall make every effort to utilize the preferred "4B" design.

(f) The department shall explore the development of a multiuse trail for bicyclists, pedestrians, skateboarders, and similar users along the SR 167 right-of-way acquired for the project to connect a network of new and existing trails from Mount Rainier to Point Defiance Park.

(g) If sufficient bonding authority to complete this project is not provided within chapter 421, Laws of 2019 (addressing tolling), or within a bond authorization act referencing chapter 421, Laws of 2019 by June 30, 2019, it is the intent of the legislature to return the Puget Sound Gateway project (M00600R) to its previously identified construction schedule by moving \$128,900,000 in connecting Washington account—state appropriation back to the 2027-2029 biennium from the 2023-2025 biennium on the list referenced in subsection (2) of this section. If sufficient bonding authority is provided, it is the intent of the legislature to advance the project to allow for earlier completion and inflationary savings.

(15) It is the intent of the legislature that, for the I-5/North Lewis County Interchange project (L2000204), the department develop and design the project with the objective of significantly improving access to the industrially zoned properties in north Lewis county. The design must consider the county's process of investigating alternatives to improve such access from Interstate 5 that began in March 2015.

(16) (~~(\$1,029,000)~~) \$1,030,000 of the transportation partnership account—state appropriation is provided solely for the U.S. 2 Trestle IJR project (L1000158).

(17) The department shall itemize all future requests for the construction of buildings on a project list and submit them through the transportation executive information system as part of the department's annual budget submittal. It is the intent of the legislature that new facility construction must be transparent and not appropriated within larger highway construction projects.

(18) Any advisory group that the department convenes during the 2019-2021 fiscal biennium must consider the interests of the entire state of Washington.

(19) The legislature finds that there are sixteen companies involved in wood preserving in the state that employ four hundred workers and have an annual payroll of fifteen million dollars. Before the department's switch to steel guardrails, ninety percent of the twenty-five hundred mile guardrail system was constructed of preserved wood and one hundred ten thousand wood guardrail posts were produced annually for state use. Moreover, the policy of using steel posts requires the state to use imported steel. Given these findings, where practicable, and until June 30, 2021, the department shall include the design option to use wood guardrail posts, in addition to steel posts, in new guardrail installations. The selection of posts must be consistent with the agency design manual policy that existed before December 2009.

(20)(a) For connecting Washington projects that have already begun and are eligible for the authority granted in section 601 (~~(of this act)~~), chapter 219, Laws of 2020, the department shall prioritize advancing the following projects if expected reappropriations become available:

(i) SR 14/I-205 to SE 164th Ave - Auxiliary Lanes (L2000102);

(ii) SR 305 Construction - Safety Improvements (N30500R);

(iii) SR 14/Bingen Underpass (L2220062);

(iv) I-405/NE 132nd Interchange - Totem Lake (L1000110);

(v) US Hwy 2 Safety (N00200R);

(vi) US-12/Walla Walla Corridor Improvements (T20900R);

(vii) I-5 JBLM Corridor Improvements (M00100R);

(viii) I-5/Slater Road Interchange - Improvements (L1000099);

(ix) SR 510/Yelm Loop Phase 2 (T32700R); or

(x) SR 520/124th St Interchange (Design and Right of Way) (L1000098).

(b) To the extent practicable, the department shall use the flexibility and authority granted in this section and in section 601 of this act to minimize the amount of reappropriations needed each biennium.

(c) The advancement of a project may not hinder the delivery of the projects for which the reappropriations are necessary for the 2021-2023 fiscal biennium.

(21) The legislature continues to prioritize the replacement of the state's aging infrastructure and recognizes the importance of reusing and recycling construction aggregate and recycled concrete materials in our transportation system. To accomplish Washington state's sustainability goals in transportation and in accordance with RCW 70.95.805, the legislature reaffirms its determination that recycled concrete aggregate and other transportation building materials are natural resource construction materials that are too valuable to be wasted and landfilled, and are a commodity as defined in WAC 173-350-100.

Further, the legislature determines construction aggregate and recycled concrete materials substantially meet widely recognized international, national, and local standards and specifications referenced in American society for testing and materials, American concrete institute, Washington state department of transportation, Seattle department of transportation, American public works association, federal aviation administration, and federal highway administration specifications, and are described as necessary and desirable products for recycling and reuse by state and federal agencies.

As these recyclable materials have well established markets, are substantially a primary or secondary product of necessary construction processes and production, and are managed as an item of commercial value,

construction aggregate and recycled concrete materials are exempt from chapter 173-350 WAC.

(22) (a) (~~(\$17,500,000)~~) \$8,072,000 of the motor vehicle account—state appropriation (~~(+e)~~) and \$7,329,000 of the motor vehicle account—private/local appropriation are provided solely for staffing of a project office to replace the Interstate 5 bridge across the Columbia river (G2000088). If at least a \$9,000,000 transfer is not authorized in section 406(29), chapter 416, Laws of 2019, then \$9,000,000 of the motor vehicle account—state appropriation lapses.

(b) (~~Of the amount provided in this subsection, \$7,780,000 of the motor vehicle account state appropriation must be placed in unallotted status by the office of financial management until the department develops a detailed plan for the work of this project office in consultation with the chairs and ranking members of the transportation committees of the legislature. The director of the office of financial management shall consult with the chairs and ranking members of the transportation committees of the legislature prior to making a decision to allot these funds.~~)

(~~e~~) The work of this project office includes, but is not limited to, the reevaluation of the purpose and need identified for the project previously known as the Columbia river crossing, the reevaluation of permits and development of a finance plan, the reengagement of key stakeholders and the public, and the reevaluation of scope, schedule, and budget for a reinvigorated bistate effort for replacement of the Interstate 5 Columbia river bridge. When reevaluating the finance plan for the project, the department shall assume that some costs of the new facility may be covered by tolls. The project office must also study the possible different governance structures for a bridge authority that would provide for the joint administration of the bridges over the Columbia river between Oregon and Washington. As part of this study, the project office must examine the feasibility and necessity of an interstate compact in conjunction with the national center for interstate compacts.

(~~d~~) (c) Within the amount provided in this subsection, the department must

implement chapter 137, Laws of 2019 (projects of statewide significance).

(~~e~~) (d) The department shall have as a goal to:

(i) Reengage project stakeholders and reevaluate the purpose and need and environmental permits by July 1, 2020;

(ii) Develop a finance plan by December 1, 2020; and

(iii) Have made significant progress toward beginning the supplemental environmental impact statement process by June 30, 2021. The department shall aim to provide a progress report on these activities to the governor and the transportation committees of the legislature by December 1, 2019, and a final report to the governor and the transportation committees of the legislature by December 1, 2020.

(23) (~~(\$17,500,000 of the motor vehicle account state appropriation is provided solely to begin the pre design phase on the I-5/Columbia River Bridge project (G2000088).~~)

(~~e~~) (a) \$191,360,000 of the connecting Washington account—state appropriation, \$47,655,000 of the motor vehicle account—federal appropriation, \$11,179,000 of the motor vehicle account—private/local appropriation, \$6,100,000 of the motor vehicle account—state appropriation, and \$18,706,000 of the transportation partnership account—state appropriation are provided solely for the Fish Passage Barrier Removal project (OBI4001) with the intent of fully complying with the court injunction by 2030.

(b) Of the amounts provided in this subsection, \$320,000 of the connecting Washington account—state appropriation is provided solely to remove the fish passage barrier on state route number 6 that interfaces with Boistfort Valley water utilities near milepost 46.6.

(c) The department shall coordinate with the Brian Abbott fish passage barrier removal board to use a watershed approach to maximize habitat gain by replacing both state and local culverts. The department shall deliver high habitat value fish passage barrier corrections that it has identified, guided by the following factors: Opportunity to bundle projects, ability to leverage investments by others, presence of other barriers, project readiness, other

transportation projects in the area, and transportation impacts.

(d) The department must keep track of, for each barrier removed: (i) The location; (ii) the amount of fish habitat gain; and (iii) the amount spent to comply with the injunction.

(e) It is the intent of the legislature that for the amount listed for the 2021-2023 biennium for the Fish Passage Barrier Removal project (OBI4001) on the LEAP list referenced in subsection (1) of this section, that accrued practical design savings deposited in the transportation future funding program account be used to help fund the cost of fully complying with the court injunction by 2030.

~~((25))~~ (24) (a) The Washington state department of transportation is directed to pursue compliance with the *U.S. v. Washington* permanent injunction by delivering culvert corrections within the injunction area guided by the principle of providing the greatest fisheries habitat gain at the earliest time and considering the following factors: Opportunity to bundle projects, tribal priorities, ability to leverage investments by others, presence of other barriers, project readiness, culvert condition, other transportation projects in the area, and transportation impacts.

(b) The department and Brian Abbott fish barrier removal board, while providing the opportunity for stakeholders, tribes, and government agencies to give input on a statewide culvert remediation plan, must provide updates on the development of the statewide culvert remediation plan to the capital budget, ways and means, and transportation committees of the legislature by November 1, 2020, and March 15, 2021. The first update must include a project timeline and plan to ensure that all state agencies with culvert correction programs are involved in the creation of the comprehensive plan. The department and Brian Abbott fish barrier removal board must submit the final comprehensive statewide culvert remediation plan and the process by which it will be adaptively managed over time to the governor and the legislative fiscal committees by June 30, 2021.

~~((26) \$16,649,000))~~ (25) \$4,880,000 of the connecting Washington account—state appropriation, \$373,000 of the

motor vehicle account—state appropriation, and ~~((6,000,000))~~ \$113,000 of the motor vehicle account—private/local appropriation are provided solely for the I-90/Barker to Harvard - Improve Interchanges & Local Roads project (L2000122). The connecting Washington account appropriation for the improvements that fall within the city of Liberty Lake may only be expended if the city of Liberty Lake agrees to cover any project costs within the city of Liberty Lake above the \$20,900,000 of state appropriation provided for the total project in LEAP Transportation Document ~~((2020))~~ 2021-1 as developed March ~~((11, 2020))~~ 22, 2021, Program - Highway Improvements (I).

~~((27))~~ (26) (a) ~~((6,799,000))~~ \$3,901,000 of the motor vehicle account—federal appropriation, ~~((31,000))~~ \$34,000 of the motor vehicle account—state appropriation ~~((, \$3,812,000 of the transportation partnership account state appropriation))~~, and ~~((7,000,000))~~ \$4,519,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation are provided solely for the SR 167/SR 410 to SR 18 - Congestion Management project (316706C).

(b) If sufficient bonding authority to complete this project is not provided within chapter 421, Laws of 2019 (addressing tolling), or within a bond authorization act referencing chapter 421, Laws of 2019 by June 30, 2019, it is the intent of the legislature to remove the \$100,000,000 in toll funding from this project on the list referenced in subsection (2) of this section.

~~((28))~~ (27) For the I-405/North 8th Street Direct Access Ramp in Renton project (L1000280), if sufficient bonding authority to begin this project is not provided within chapter 421, Laws of 2019 (addressing tolling), or within a bond authorization act referencing chapter 421, Laws of 2019, it is the intent of the legislature to remove the project from the list referenced in subsection (2) of this section.

~~((29) \$7,985,000))~~ (28) \$7,071,000 of the Special Category C account—state appropriation ~~((and \$1,000,000 of the motor vehicle account private/local appropriation are))~~ is provided solely for the SR 18 Widening - Issaquah/Hobart Rd to Raging River project (L1000199) for improving and widening state route number

18 to four lanes from Issaquah-Hobart Road to Raging River.

((~~30~~)) (29) \$2,250,000 of the motor vehicle account—state appropriation is provided solely for the I-5 Corridor from Mounts Road to Tumwater project (L1000231) for completing a National and State Environmental Policy Act (NEPA/SEPA) analysis to identify mid- and long-term environmental impacts associated with future improvements along the I-5 corridor from Tumwater to DuPont.

((~~31~~ ~~\$622,000~~)) (30) \$200,000 of the motor vehicle account—state appropriation is provided solely for the US 101/East Sequim Corridor Improvements project (L2000343).

((~~32~~ ~~\$12,916,000~~)) (31) \$777,000 of the motor vehicle account—state appropriation is provided solely for the SR 522/Paradise Lk Rd Interchange & Widening on SR 522 (Design/Engineering) project (NPARADI).

((~~33~~ ~~\$1,000,000~~)) (32) \$1,001,000 of the motor vehicle account—state appropriation ((~~is~~)) and \$1,227,000 of the motor vehicle account—federal appropriation are provided solely for the US 101/Morse Creek Safety Barrier project (L1000247).

((~~34~~ ~~\$1,000,000~~)) (33) \$85,000 of the motor vehicle account—state appropriation is provided solely for the SR 162/410 Interchange Design and Right of Way project (L1000276).

((~~36~~)) (34) The appropriations in this section include savings due to anticipated project underruns; however, it is unknown which projects will provide savings. The legislature intends to provide sufficient flexibility for the department to manage to this savings target. To provide this flexibility, the office of financial management may authorize, through an allotment modification, reductions in the appropriated amounts that are provided solely for a particular purpose within this section subject to the following conditions and limitations:

(a) The department must confirm that any modification requested under this subsection of amounts provided solely for a specific purpose are not expected to be used for that purpose in this biennium;

(b) Allotment modifications authorized under this subsection may not result in

increased funding for any project beyond the amount provided for that project in the 2019-2021 fiscal biennium in LEAP Transportation Document ((~~2020~~)) 2021-2 ALL PROJECTS as developed March ((~~11~~, ~~2020~~)) 22, 2021;

(c) Allotment modifications authorized under this subsection apply only to amounts appropriated in this section from the following accounts: Multimodal transportation account—state, transportation partnership account—state, connecting Washington account—state, and special category C account—state; and

(d) By December 1, 2020, the department must submit a report to the transportation committees of the legislature regarding the actions taken under this subsection.

Sec. 1005. 2020 c 219 s 306 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
PRESERVATION—PROGRAM P**

Recreational Vehicle Account—State
Appropriation \$2,971,000

Transportation Partnership Account—
State

Appropriation ((~~\$20,248,000~~))

\$20,566,000

Highway Safety Account—State
Appropriation \$1,000

Motor Vehicle Account—State
Appropriation ((~~\$82,447,000~~))

\$87,866,000

Motor Vehicle Account—Federal
Appropriation ((~~\$490,744,000~~))

\$498,257,000

Motor Vehicle Account—Private/Local

Appropriation ((~~\$7,408,000~~))

\$7,660,000

State Route Number 520 Corridor
Account—State

Appropriation ((~~\$326,000~~))

\$395,000

Connecting Washington Account—State
Appropriation ((~~\$204,630,000~~))

\$178,738,000

Tacoma Narrows Toll Bridge Account—
State

Appropriation (~~(\$8,350,000)~~)

\$1,078,000

Alaskan Way Viaduct Replacement
Project Account—State

Appropriation (~~(\$10,000)~~)

\$79,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation (~~(\$3,018,000)~~)

\$1,457,000

Transportation 2003 Account (Nickel
Account)—State

Appropriation \$17,892,000

TOTAL APPROPRIATION
(~~(\$838,044,000)~~)

\$816,960,000

The appropriations in this section are
subject to the following conditions and
limitations:

(1) Except as provided otherwise in
this section, the entire connecting
Washington account—state appropriation
and the entire transportation
partnership account—state appropriation
are provided solely for the projects and
activities as listed by fund, project,
and amount in LEAP Transportation
Document ((2020)) 2021-1 as developed
March ((11, 2020)) 22, 2021, Program -
Highway Preservation Program (P).
However, limited transfers of specific
line-item project appropriations may
occur between projects for those amounts
listed subject to the conditions and
limitations in section 601 ((~~of this~~
~~act~~)), chapter 219, Laws of 2020.

(2) Except as provided otherwise in
this section, the entire motor vehicle
account—state appropriation and motor
vehicle account—federal appropriation
are provided solely for the projects and
activities listed in LEAP Transportation
Document ((2020)) 2021-2 ALL PROJECTS as
developed March ((11, 2020)) 22, 2021,
Program - Highway Preservation Program
(P). Any federal funds gained through
efficiencies, adjustments to the federal
funds forecast, additional congressional
action not related to a specific project
or purpose, or the federal funds
redistribution process must then be

applied to highway and bridge
preservation activities or fish passage
barrier corrections (0BI4001).

(3) Within the motor vehicle account—
state appropriation and motor vehicle
account—federal appropriation, the
department may transfer funds between
programs I and P, except for funds that
are otherwise restricted in this act. Ten
days prior to any transfer, the
department must submit its request to the
office of financial management and the
transportation committees of the
legislature and consider any concerns
raised. The department shall submit a
report on fiscal year funds transferred
in the prior fiscal year using this
subsection as part of the department's
annual budget submittal.

(4) (~~(\$26,683,000)~~) \$21,517,000 of the
connecting Washington account—state
appropriation is provided solely for the
land mobile radio upgrade (G2000055) and
is subject to the conditions,
limitations, and review provided in
section 701 ((~~of this act~~)), chapter 219,
Laws of 2020. The land mobile radio
project is subject to technical oversight
by the office of the chief information
officer. The department, in
collaboration with the office of the
chief information officer, shall
identify where existing or proposed
mobile radio technology investments
should be consolidated, identify when
existing or proposed mobile radio
technology investments can be reused or
leveraged to meet multiagency needs,
increase mobile radio interoperability
between agencies, and identify how
redundant investments can be reduced over
time. The department shall also provide
quarterly reports to the technology
services board on project progress.

(5) (~~(\$4,000,000)~~) \$5,000,000 of the
motor vehicle account—state
appropriation is provided solely for
extraordinary costs incurred from
litigation awards, settlements, or
dispute mitigation activities not
eligible for funding from the self-
insurance fund. The amount provided in
this subsection must be held in
unallotted status until the department
submits a request to the office of
financial management that includes
documentation detailing litigation-
related expenses. The office of financial
management may release the funds only
when it determines that all other funds
designated for litigation awards,

settlements, and dispute mitigation activities have been exhausted. No funds provided in this subsection may be expended on any legal fees related to the SR 99/Alaskan Way viaduct replacement project (809936Z).

(6) The appropriation in this section includes funding for starting planning, engineering, and construction of the Elwha River bridge replacement. To the greatest extent practicable, the department shall maintain public access on the existing route.

(7) \$21,289,000 of the motor vehicle account—federal appropriation and \$840,000 of the motor vehicle account—state appropriation are provided solely for the preservation of structurally deficient bridges or bridges that are at risk of becoming structurally deficient (L1000068). These funds must be used widely around the state of Washington. When practicable, the department shall pursue design-build contracts for these bridge projects to expedite delivery. The department shall provide a report that identifies the progress of each project funded in this subsection as part of its annual agency budget request.

(8) The department must consult with the Washington state patrol and the office of financial management during the design phase of any improvement or preservation project that could impact Washington state patrol weigh station operations. During the design phase of any such project, the department must estimate the cost of designing around the affected weigh station's current operations, as well as the cost of moving the affected weigh station.

(9) During the course of any planned resurfacing or other preservation activity on state route number 26 between Colfax and Othello in the 2019-2021 fiscal biennium, the department must add dug-in reflectors.

(10) Within the connecting Washington account—state appropriation, the department may transfer funds from Highway System Preservation (L1100071) to other preservation projects listed in the LEAP transportation document identified in subsection (1) of this section, if it is determined necessary for completion of these high priority preservation projects. The department's next budget submittal after using this subsection must appropriately reflect the transfer.

Sec. 1006. 2020 c 219 s 307 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
TRAFFIC OPERATIONS—PROGRAM Q—CAPITAL**

Motor Vehicle Account—State
Appropriation ((~~\$7,746,000~~))

\$6,296,000

Motor Vehicle Account—Federal
Appropriation ((~~\$6,137,000~~))

\$5,039,000

Motor Vehicle Account—Private/Local
Appropriation \$579,000

Interstate 405 and State Route Number
167 Express

Toll Lanes Account—State
Appropriation ((~~\$100,000~~))

\$189,000

TOTAL APPROPRIATION

((~~\$14,562,000~~))

\$12,103,000

The appropriations in this section are subject to the following conditions and limitations:

((~~41~~ ~~\$700,000~~)) \$121,000 of the motor vehicle account—state appropriation is provided solely for the SR 99 Aurora Bridge ITS project (L2000338).

Sec. 1007. 2020 c 219 s 308 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
WASHINGTON STATE FERRIES CONSTRUCTION—
PROGRAM W**

Puget Sound Capital Construction
Account—State

Appropriation ((~~\$116,253,000~~))

\$85,297,000

Puget Sound Capital Construction
Account—Federal

Appropriation ((~~\$199,688,000~~))

\$177,352,000

Puget Sound Capital Construction
Account—Private/Local

Appropriation ((~~\$4,779,000~~))

\$4,575,000

(9) (~~(\$96,030,000)~~) \$35,547,000 of the capital vessel replacement account—state appropriation is provided solely for the acquisition of a 144-car hybrid-electric vessel. The vendor must present to the joint transportation committee and the office of financial management, by September 15, 2019, a list of options that will result in significant cost savings changes in terms of construction or the long-term maintenance and operations of the vessel. The vendor must allow for exercising the options without a penalty. It is the intent of the legislature to provide an additional \$88,000,000 in funding in the 2021-23 biennium. The reduction provided in this subsection is an assumed underrun pursuant to subsection (11) of this section. The commencement of construction of new vessels for the ferry system is important not only for safety reasons, but also to keep skilled marine construction jobs in the Puget Sound region and to sustain the capacity of the region to meet the ongoing construction and preservation needs of the ferry system fleet of vessels. The legislature has determined that the current vessel procurement process must move forward with all due speed, balancing the interests of both the taxpayers and shipyards. To accomplish construction of vessels in accordance with RCW 47.60.810, the prevailing shipbuilder, for vessels initially funded after July 1, 2020, is encouraged to follow the historical practice of subcontracting the construction of ferry superstructures to a separate nonaffiliated contractor located within the Puget Sound region, that is qualified in accordance with RCW 47.60.690.

(10) The capital vessel replacement account—state appropriation includes up to (~~(\$96,030,000)~~) \$35,547,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(~~(12)~~) (11) The appropriations in this section include savings due to anticipated project underruns; however, it is unknown which projects will provide savings. The legislature intends to provide sufficient flexibility for the department to manage to this savings target. To provide this flexibility, the office of financial management may authorize, through an allotment modification, reductions in the appropriated amounts that are provided solely for a particular purpose within

this section subject to the following conditions and limitations:

(a) The department must confirm that any modification requested under this subsection of amounts provided solely for a specific purpose are not expected to be used for that purpose in this biennium;

(b) Allotment modifications authorized under this subsection may not result in increased funding for any project beyond the amount provided for that project in the 2019-2021 fiscal biennium in LEAP Transportation Document (~~(2020)~~) 2021-2 ALL PROJECTS as developed March (~~(11, 2020)~~) 22, 2021;

(c) Allotment modifications authorized under this subsection apply only to amounts appropriated in this section from the following accounts: Puget Sound capital construction account—state, transportation partnership account—state, and capital vessel replacement account—state; and

(d) By December 1, 2020, the department must submit a report to the transportation committees of the legislature regarding the actions taken under this subsection.

Sec. 1008. 2020 c 219 s 309 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
RAIL—PROGRAM Y—CAPITAL**

Motor Vehicle Account—State
Appropriation (~~(\$3,300,000)~~)

\$2,300,000

Essential Rail Assistance Account—
State Appropriation \$851,000

Transportation Infrastructure
Account—State

Appropriation (~~(\$7,554,000)~~)

\$7,465,000

Multimodal Transportation Account—
State

Appropriation \$74,876,000

Multimodal Transportation Account—
Federal

Appropriation \$8,601,000

Multimodal Transportation Account—
Local

Appropriation \$336,000

TOTAL	APPROPRIATION
((\$95,518,000))	
<u>\$94,429,000</u>	

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document ((~~2020~~) 2021-2 ALL PROJECTS as developed March ((~~11, 2020~~) 22, 2021, Program - Rail Program (Y).

(2) ((~~\$7,136,000~~) \$7,047,000 of the transportation infrastructure account—state appropriation is provided solely for new low-interest loans approved by the department through the freight rail investment bank (FRIB) program. The department shall issue FRIB program loans with a repayment period of no more than ten years, and charge only so much interest as is necessary to recoup the department's costs to administer the loans. The department shall report annually to the transportation committees of the legislature and the office of financial management on all FRIB loans issued.

(3) \$7,782,000 of the multimodal transportation account—state appropriation, \$51,000 of the transportation infrastructure account—state appropriation, and \$135,000 of the essential rail assistance account—state appropriation are provided solely for new statewide emergent freight rail assistance projects identified in the LEAP transportation document referenced in subsection (1) of this section.

(4) \$367,000 of the transportation infrastructure account—state appropriation and \$1,100,000 of the multimodal transportation account—state appropriation are provided solely to reimburse Highline Grain, LLC for approved work completed on Palouse River and Coulee City (PCC) railroad track in Spokane county between the BNSF Railway Interchange at Cheney and Geiger Junction and must be administered in a manner consistent with freight rail assistance program projects. The value of the public benefit of this project is expected to meet or exceed the cost of this project in: Shipper savings on transportation costs; jobs saved in rail-dependent industries; and/or reduced future costs

to repair wear and tear on state and local highways due to fewer annual truck trips (reduced vehicle miles traveled). The amounts provided in this subsection are not a commitment for future legislatures, but it is the legislature's intent that future legislatures will work to approve biennial appropriations until the full \$7,337,000 cost of this project is reimbursed.

(5) (a) \$716,000 of the essential rail assistance account—state appropriation and \$82,000 of the multimodal transportation account—state appropriation are provided solely for the purpose of the rehabilitation and maintenance of the Palouse river and Coulee City railroad line (F01111B).

(b) Expenditures from the essential rail assistance account—state in this subsection may not exceed the combined total of:

(i) Revenues and transfers deposited into the essential rail assistance account from leases and sale of property relating to the Palouse river and Coulee City railroad;

(ii) Revenues from trackage rights agreement fees paid by shippers; and

(iii) Revenues and transfers transferred from the miscellaneous program account to the essential rail assistance account, pursuant to RCW 47.76.360, for the purpose of sustaining the grain train program by maintaining the Palouse river and Coulee City railroad.

(6) The department shall issue a call for projects for the freight rail assistance program, and shall evaluate the applications in a manner consistent with past practices as specified in section 309, chapter 367, Laws of 2011. By November 15, 2020, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(7) ((~~\$10,000,000~~) \$4,031,000 of the multimodal transportation account—state appropriation is provided solely as expenditure authority for any insurance proceeds received by the state for Passenger Rail Equipment Replacement (project 700010C.) The department must use this expenditure authority only to purchase replacement equipment that has been competitively procured and for

service recovery needs and corrective actions related to the December 2017 derailment.

(8) \$898,000 of the multimodal transportation account—federal appropriation and \$8,000 of the multimodal transportation account—state appropriation are provided solely for the Ridgefield Rail Overpass (project 725910A). Total costs for this project may not exceed \$909,000 across fiscal biennia.

(9) (a) For projects funded as part of the 2015 connecting Washington transportation package listed on the LEAP transportation document identified in subsection (1) of this section, if the department expects to have substantial reappropriations for the 2021-2023 fiscal biennium, the department may, on a pilot basis, apply funding from a project in this section with an appropriation that cannot be used for the current fiscal biennium to advance the South Kelso Railroad Crossing project (L1000147).

(b) At least ten business days before advancing the project pursuant to this subsection, the department must notify the office of financial management and the transportation committees of the legislature. The advancement of the project may not hinder the delivery of the projects for which the reappropriations are necessary for the 2021-2023 fiscal biennium.

(c) To the extent practicable, the department shall use the flexibility and authority granted in this section to minimize the amount of reappropriations needed each biennium.

~~(10) ((The multimodal transportation account state appropriation includes up to \$25,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.867.~~

~~(11))~~ The department must report to the joint transportation committee on the progress made on freight rail investment bank projects and freight rail assistance projects funded during this biennium by January 1, 2020.

~~((12))~~ (11) \$1,500,000 of the multimodal transportation account—state appropriation is provided solely for the Chelatchie Prairie railroad roadbed rehabilitation project (L1000233).

~~((13))~~ (12) \$250,000 of the multimodal transportation account—state

appropriation is provided solely for the Port of Moses Lake Northern Columbia Basin railroad feasibility study (L1000235).

~~((14))~~ (13) \$500,000 of the multimodal transportation account—state appropriation is provided solely for the Spokane airport transload facility project (L1000242).

~~((15) \$1,000,000 of the motor vehicle account state appropriation is provided solely for the grade separation at Bell road project (L1000239).~~

~~(16))~~ (14) \$750,000 of the motor vehicle account—state appropriation and \$399,000 of the multimodal transportation account—state appropriation are provided solely for the rail crossing improvements at 6th Ave. and South 19th St. project (L2000289).

~~((18))~~ (15) The appropriations in this section include savings due to anticipated project underruns; however, it is unknown which projects will provide savings. The legislature intends to provide sufficient flexibility for the department to manage to this savings target. To provide this flexibility, the office of financial management may authorize, through an allotment modification, reductions in the appropriated amounts that are provided solely for a particular purpose within this section subject to the following conditions and limitations:

(a) The department must confirm that any modification requested under this subsection of amounts provided solely for a specific purpose are not expected to be used for that purpose in this biennium;

(b) Allotment modifications authorized under this subsection may not result in increased funding for any project beyond the amount provided for that project in the 2019-2021 fiscal biennium in LEAP Transportation Document ~~((2020))~~ 2021-2 ALL PROJECTS as developed March ~~((11, 2020))~~ 22, 2021;

(c) Allotment modifications authorized under this subsection apply only to amounts appropriated in this section from the multimodal transportation account—state; and

(d) By December 1, 2020, the department must submit a report to the transportation committees of the legislature regarding the actions taken under this subsection.

Sec. 1009. 2020 c 219 s 310 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—
LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

Highway Infrastructure Account—State
Appropriation \$1,276,000

Highway Infrastructure Account—
Federal Appropriation \$1,337,000

Transportation Partnership Account—
State

Appropriation (~~(\$2,380,000)~~)

\$1,630,000

Highway Safety Account—State
Appropriation \$1,314,000

Motor Vehicle Account—State
Appropriation (~~(\$35,607,000)~~)

\$24,543,000

Motor Vehicle Account—Federal
Appropriation (~~(\$41,420,000)~~)

\$52,267,000

Motor Vehicle Account—Private/Local
Appropriation (~~(\$24,600,000)~~)

\$18,000,000

Connecting Washington Account—State
Appropriation (~~(\$155,550,000)~~)

\$130,708,000

Multimodal Transportation Account—
State

Appropriation (~~(\$77,469,000)~~)

\$74,351,000

TOTAL APPROPRIATION
(~~(\$340,953,000)~~)

\$305,426,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document (~~(2020)~~) 2021-2 ALL PROJECTS as developed March (~~(11, 2020)~~) 22, 2021, Program - Local Programs Program (Z).

(2) The amounts identified in the LEAP transportation document referenced under subsection (1) of this section for

pedestrian safety/safe routes to school are as follows:

(a) (~~(\$18,380,000)~~) \$8,361,000 of the multimodal transportation account—state appropriation is provided solely for newly selected pedestrian and bicycle safety program projects. (~~(\$18,577,000)~~) \$19,363,000 of the multimodal transportation account—state appropriation and \$1,380,000 of the transportation partnership account—state appropriation are reappropriated for pedestrian and bicycle safety program projects selected in the previous biennia (L2000188).

(b) (~~(\$11,400,000)~~) \$4,066,000 of the motor vehicle account—federal appropriation and (~~(\$7,750,000)~~) \$4,668,000 of the multimodal transportation account—state appropriation are provided solely for newly selected safe routes to school projects. (~~(\$11,354,000)~~) \$10,744,000 of the motor vehicle account—federal appropriation, (~~(\$4,640,000)~~) \$3,075,000 of the multimodal transportation account—state appropriation, and \$1,314,000 of the highway safety account—state appropriation are reappropriated for safe routes to school projects selected in the previous biennia (L2000189). The department may consider the special situations facing high-need areas, as defined by schools or project areas in which the percentage of the children eligible to receive free and reduced-price meals under the national school lunch program is equal to, or greater than, the state average as determined by the department, when evaluating project proposals against established funding criteria while ensuring continued compliance with federal eligibility requirements.

(3) The department shall submit a report to the transportation committees of the legislature by December 1, 2019, and December 1, 2020, on the status of projects funded as part of the pedestrian safety/safe routes to school grant program. The report must include, but is not limited to, a list of projects selected and a brief description of each project's status.

(4) (~~(\$37,537,000)~~) \$32,976,000 of the multimodal transportation account—state appropriation is provided solely for bicycle and pedestrian projects listed in the LEAP transportation document

referenced in subsection (1) of this section.

(5) (~~(\$23,926,000)~~) \$13,829,000 of the connecting Washington account—state appropriation is provided solely for the Covington Connector (L2000104). The amounts described in the LEAP transportation document referenced in subsection (1) of this section are not a commitment by future legislatures, but it is the legislature's intent that future legislatures will work to approve appropriations in the 2019-2021 fiscal biennium to reimburse the city of Covington for approved work completed on the project up to the full \$24,000,000 cost of this project.

(6) (a) For projects funded as part of the 2015 connecting Washington transportation package listed on the LEAP transportation document identified in subsection (1) of this section, if the department expects to have substantial reappropriations for the 2021-2023 fiscal biennium, the department may, on a pilot basis, apply funding from a project in this section with an appropriation that cannot be used for the current fiscal biennium to advance one or more of the following projects:

(i) I-5/Port of Tacoma Road Interchange (L1000087);

(ii) SR 99 Revitalization in Edmonds (NEDMOND); or

(iii) SR 523 145th Street (L1000148);

(b) At least ten business days before advancing a project pursuant to this subsection, the department must notify the office of financial management and the transportation committees of the legislature. The advancement of a project may not hinder the delivery of the projects for which the reappropriations are necessary for the 2021-2023 fiscal biennium.

(c) To the extent practicable, the department shall use the flexibility and authority granted in this section to minimize the amount of reappropriations needed each biennium.

(7) It is the expectation of the legislature that the department will be administering a local railroad crossing safety grant program for \$7,000,000 in federal funds during the 2019-2021 fiscal biennium.

(8) (a) (~~(\$15,213,000)~~) \$22,500,000 of the motor vehicle account—federal

appropriation is provided solely for national highway freight network projects identified on the project list submitted in accordance with section 218(4)(b), chapter 14, Laws of 2016 on October 31, 2016.

(b) The department shall convene a stakeholder group for the purpose of developing a recommendation for a Washington freight advisory committee. The recommendations must include, but are not limited to, defining the committee's purpose and goals, roles and responsibilities, reporting structure, and proposed activities. Stakeholders must include representation from, but not limited to, the trucking industry, the maritime industry, the rail industry, cities, tribal governments, counties, ports, and representatives from key industrial associations important to the state's economic vitality and other relevant public and private interests. In developing the recommendation, the stakeholder group must review practices used by other states. The proposed committee must conform with requirements of the fixing America's surface transportation act and other relevant federal legislation. The recommendations must include how the committee can address improving freight mobility including, but not limited to, addressing insufficient truck parking in Washington state, examining the link between preservation investments and freight mobility, and enhancing freight logistics through the application of technology. The stakeholder group shall make recommendations to the governor and the transportation committees of the legislature by December 1, 2020.

(9) \$1,000,000 of the motor vehicle account—state appropriation is provided solely for the Beech Street Extension project (L1000222).

(10) (~~(\$3,900,000)~~) \$2,000,000 of the motor vehicle account—state appropriation is provided solely for the Dupont-Steilacoom road improvements project (L1000224).

(11) (~~(\$650,000)~~) \$100,000 of the motor vehicle account—state appropriation is provided solely for the SR 104/40th place northeast roundabout project (L1000244).

(12) (~~(\$860,000)~~) \$360,000 of the multimodal transportation account—state appropriation is provided solely for the

Clinton to Ken's corner trail project (L1000249).

~~((13)) (\$210,000 of the motor vehicle account—state appropriation is provided solely for the I 405/44th gateway signage and green-scaping improvements project (L1000250)).~~

~~((14) \$650,000))~~ \$50,000 of the motor vehicle account—state appropriation is provided solely for the Wallace Kneeland and Shelton springs road intersection improvements project (L1000260).

~~((15))~~ (14) \$1,000,000 of the motor vehicle account—state appropriation and \$500,000 of the multimodal transportation account—state appropriation are provided solely for the complete 224th Phase two project (L1000270).

~~((16))~~ (15) \$60,000 of the multimodal transportation account—state appropriation is provided solely for the installation of an updated meteorological station at the Colville airport (L1000279).

~~((17))~~ (16) (a) \$700,000 of the motor vehicle account—state appropriation is provided solely for the Ballard-Interbay Regional Transportation system plan project (L1000281).

(b) Funding in this subsection is provided solely for the city of Seattle to develop a plan and report for the Ballard-Interbay Regional Transportation System project to improve mobility for people and freight. The plan must be developed in coordination and partnership with entities including but not limited to the city of Seattle, King county, the Port of Seattle, Sound Transit, the Washington state military department for the Seattle armory, and the Washington state department of transportation. The plan must examine replacement of the Ballard bridge and the Magnolia bridge, which was damaged in the 2001 Nisqually earthquake. The city must provide a report on the plan that includes recommendations to the Seattle city council, King county council, and the transportation committees of the legislature by November 1, 2020. The report must include recommendations on how to maintain the current and future capacities of the Magnolia and Ballard bridges, an overview and analysis of all plans between 2010 and 2020 that examine how to replace the Magnolia bridge, and recommendations on a timeline for

constructing new Magnolia and Ballard bridges.

~~((18))~~ (17) \$750,000 of the motor vehicle account—state appropriation is provided solely for the Mickelson Parkway project (L1000282).

~~((19) \$300,000))~~ (18) \$175,000 of the motor vehicle account—state appropriation is provided solely for the South 314th Street Improvements project (L1000283).

~~((20) \$250,000))~~ (19) \$200,000 of the motor vehicle account—state appropriation is provided solely for the Ridgefield South I-5 Access Planning project (L1000284).

~~((21) \$300,000))~~ (20) \$50,000 of the motor vehicle account—state appropriation is provided solely for the Washougal 32nd Street Underpass Design and Permitting project (L1000285).

~~((22) \$600,000 of the connecting Washington account—state appropriation, \$150,000))~~ (21) \$25,000 of the motor vehicle account—state appropriation, and \$267,000 of the multimodal transportation account—state appropriation are provided solely for the Bingen Walnut Creek and Maple Railroad Crossing (L2000328).

~~((23) \$1,500,000))~~ (22) \$200,000 of the motor vehicle account—state appropriation is provided solely for the SR 303 Warren Avenue Bridge Pedestrian Improvements project (L2000339).

~~((24) \$1,000,000))~~ (23) \$150,000 of the motor vehicle account—state appropriation is provided solely for the 72nd/Washington Improvements in Yakima project (L2000341).

~~((25) \$650,000))~~ (24) \$150,000 of the motor vehicle account—state appropriation is provided solely for the 48th/Washington Improvements in Yakima project (L2000342).

~~((27))~~ (25) The appropriations in this section include savings due to anticipated project underruns; however, it is unknown which projects will provide savings. The legislature intends to provide sufficient flexibility for the department to manage to this savings target. To provide this flexibility, the office of financial management may authorize, through an allotment modification, reductions in the appropriated amounts that are provided

solely for a particular purpose within this section subject to the following conditions and limitations:

(a) The department must confirm that any modification requested under this subsection of amounts provided solely for a specific purpose are not expected to be used for that purpose in this biennium;

(b) Allotment modifications authorized under this subsection may not result in increased funding for any project beyond the amount provided for that project in the 2019-2021 fiscal biennium in LEAP Transportation Document ((2020)) 2021-2 ALL PROJECTS as developed March ((11, 2020)) 22, 2021;

(c) Allotment modifications authorized under this subsection apply only to amounts appropriated in this section from the following accounts: Connecting Washington account—state and multimodal transportation account—state; and

(d) By December 1, 2020, the department must submit a report to the transportation committees of the legislature regarding the actions taken under this subsection.

(26) \$11,679,000 of the motor vehicle account-federal appropriation is provided solely to accelerate local preservation projects that ensure the reliable movement of freight on the national highway freight system. The department will identify projects through its current national highway system asset management call for projects with applications due in February 2021.

TRANSFERS AND DISTRIBUTIONS

Sec. 1101. 2020 c 219 s 401 (uncodified) is amended to read as follows:

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 ACCOUNT AND TRANSPORTATION FUND REVENUE

Special Category C Account—State Appropriation ((~~\$105,000~~))

\$21,000

((~~Multimodal Transportation Account—State Appropriation \$125,000~~))

Transportation Partnership Account—State Appropriation ((~~\$1,407,000~~))

\$182,000

Connecting Washington Account—State Appropriation ((~~\$7,723,000~~))

\$2,455,000

Highway Bond Retirement Account—State Appropriation ((~~\$1,378,835,000~~))

\$1,308,311,000

Ferry Bond Retirement Account—State Appropriation ((~~\$25,078,000~~))

\$25,079,000

Transportation Improvement Board Bond Retirement

Account—State Appropriation ((~~\$12,452,000~~))

\$12,062,000

Nondebt-Limit Reimbursable Bond Retirement

Account—State Appropriation ((~~\$31,253,000~~))

\$29,514,000

Toll Facility Bond Retirement Account—State

Appropriation ((~~\$86,483,000~~))

\$69,407,000

TOTAL APPROPRIATION ((~~\$1,543,461,000~~))

\$1,447,031,000

Sec. 1102. 2020 c 219 s 402 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES

((~~Multimodal Transportation Account—State Appropriation \$25,000~~))

Transportation Partnership Account—State

Appropriation ((~~\$281,000~~))

\$68,000

Connecting Washington Account—State Appropriation ((~~\$1,599,000~~))

\$640,000

Special Category C Account—State Appropriation ((~~\$21,000~~))

\$9,000

TOTAL APPROPRIATION
 ((\$1,926,000))
\$717,000

Sec. 1103. 2020 c 219 s 403 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION

Motor Vehicle Account—State Appropriation:

For motor vehicle fuel tax distributions to cities and counties
 ((\$508,276,000))
\$456,823,000

Sec. 1104. 2020 c 219 s 404 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

Motor Vehicle Account—State Appropriation:

For motor vehicle fuel tax refunds and statutory transfers
 ((\$2,146,790,000))
\$1,921,901,000

Sec. 1105. 2020 c 219 s 405 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—TRANSFERS

Motor Vehicle Account—State Appropriation:

For motor vehicle fuel tax refunds and transfers ((\$235,788,000))
\$240,415,000

Sec. 1106. 2020 c 219 s 406 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—ADMINISTRATIVE TRANSFERS

(1) ((~~Highway Safety Account State Appropriation:~~

~~For transfer to the Multimodal Transportation~~

~~Account State \$54,000,000~~

~~(2) Transportation Partnership Account State~~

~~Appropriation: For transfer to the Motor Vehicle~~

~~Account State \$45,000,000~~

~~(3)) Motor Vehicle Account—State Appropriation:~~

~~For transfer to the State Patrol Highway~~

~~Account—State ((\$57,000,000))~~

~~\$22,000,000~~

~~((4)) (2) Motor Vehicle Account—State Appropriation:~~

~~For transfer to the Freight Mobility Investment~~

~~Account—State \$8,070,000~~

~~((5)) (3) Motor Vehicle Account—State Appropriation:~~

~~For transfer to the Rural Arterial Trust~~

~~Account—State \$1,732,000~~

~~((6)) (4) Motor Vehicle Account—State Appropriation:~~

~~For transfer to the Transportation Improvement~~

~~Account—State ((\$5,067,000))~~

~~\$34,067,000~~

~~((7)) (5) Motor Vehicle Account—State Appropriation:~~

~~For transfer to the Puget Sound Capital Construction~~

~~Account—State ((\$52,000,000))~~

~~\$43,000,000~~

~~((8) Motor Vehicle)) (6) Multimodal Transportation~~

~~Account—State Appropriation: For transfer to the~~

~~Puget Sound Ferry Operations Account—State ((\$55,000,000))~~

~~\$50,000,000~~

~~((9)) (7) Rural Mobility Grant Program Account—State~~

~~Appropriation: For transfer to the Multimodal~~

~~Transportation Account—State \$3,000,000~~

~~((10)) (8) State Route Number 520 Civil Penalties~~

Account—State Appropriation: For transfer to

the State Route Number 520 Corridor

Account—State \$1,434,000

~~((11))~~ (9) Capital Vessel Replacement Account—State

Appropriation: For transfer to the Connecting

Washington Account—State \$60,000,000

~~((12))~~ (10) Multimodal Transportation Account—State

Appropriation: For transfer to the Regional

Mobility Grant Program Account—State \$11,215,000

~~((13))~~ (11) Multimodal Transportation Account—State

Appropriation: For transfer to the Rural

Mobility Grant Program Account—State \$15,223,000

~~((14) Transportation 2003 Account (Nickel~~

~~Account))~~ (12) Multimodal Transportation Account—

State Appropriation: For transfer to the Puget

Sound Capital Construction Account—State ~~((15,000,000))~~

\$20,000,000

~~((15) (a) Alaskan Way Viaduct Replacement Project~~

~~Account State Appropriation: For transfer to the~~

~~Motor Vehicle Account State \$9,992,000~~

~~(b) The transfer identified in this subsection is provided solely to repay in full the motor vehicle account state appropriation loan from section 1005(21), chapter 416, Laws of 2019.~~

~~(16))~~ (13) (a) Transportation Partnership Account—State

Appropriation: For transfer to the Alaskan Way Viaduct

Replacement Project Account—State \$77,956,000

(b) The amount transferred in this subsection represents that portion of the up to \$200,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.873, intended to be sold through the 2021-2023 fiscal biennium, used only for construction of the SR 99/Alaskan Way Viaduct Replacement project (809936Z), and that must be repaid from the Alaskan Way viaduct replacement project account consistent with RCW 47.56.864.

~~((17))~~ (14) Motor Vehicle Account—State Appropriation:

For transfer to the County Arterial Preservation

Account—State ~~((4,829,000))~~

\$9,902,000

~~((18))~~ (15) (a) General Fund Account—State Appropriation:

For transfer to the State Patrol Highway

Account—State \$625,000

(b) The state treasurer shall transfer the funds only after receiving notification from the Washington state patrol under section 207(7), chapter 416, Laws of 2019.

~~((19))~~ (16) Capital Vessel Replacement Account—State

Appropriation: For transfer to the Transportation

Partnership Account—State ~~((2,312,000))~~

\$1,167,000

~~((20))~~ (17) (a) Alaskan Way Viaduct Replacement Project

Account—State Appropriation: For transfer to the

Transportation Partnership Account—State \$15,858,000

(b) The amount transferred in this subsection represents repayment of debt service incurred for the construction of the SR 99/Alaskan Way Viaduct Replacement project (809936Z).

~~((21))~~ (18) Tacoma Narrows Toll Bridge Account—State

Appropriation: For transfer to the Motor

Vehicle Account—State \$950,000

~~((22))~~ (19) (a) Tacoma Narrows Toll Bridge Account—State Appropriation:

For transfer to the Motor Vehicle Account—State \$5,000,000

(b) A transfer in the amount of \$5,000,000 was made from the Motor Vehicle Account to the Tacoma Narrows Toll Bridge Account in April 2019. It is the intent of the legislature that this transfer was to be temporary, for the purpose of minimizing the impact of toll increases, and this is an equivalent reimbursing transfer to occur in November 2019.

~~((23))~~ (20) (a) Transportation ~~((2003 Account (Nickel Account)))~~ Partnership Account

—State Appropriation: For transfer to the Tacoma

Narrows Toll Bridge Account—State \$12,543,000

(b) It is the intent of the legislature that this transfer is temporary, for the purpose of minimizing the impact of toll increases, and an equivalent reimbursing transfer is to occur after the debt service and deferred sales tax on the Tacoma Narrows bridge construction costs are fully repaid in accordance with chapter 195, Laws of 2018.

~~((24))~~ (21) Transportation Infrastructure Account—State

Appropriation: For transfer to the multimodal

Transportation Account—State \$9,000,000

~~((25))~~ (22) Multimodal Transportation Account—State

Appropriation: For transfer to the Pilotage

Account—State \$2,500,000

~~((26))~~ (23) (a) Motor Vehicle Account—State

Appropriation: For transfer to the County Road

Administration Board Emergency Loan Account—State \$1,000,000

(b) If chapter 157, Laws of 2019 is not enacted by June 30, 2019, the amount provided in this subsection lapses.

~~((27))~~ (24) (a) Advanced Environmental Mitigation

Revolving Account—State
Appropriation: For transfer

to the Motor Vehicle Account—State \$9,000,000

(b) The amount transferred in this subsection is contingent on at least a \$9,000,000 transfer to the advanced environmental mitigation revolving account authorized by June 30, 2019, in the omnibus capital appropriations act.

~~((28))~~ (25) Multimodal Transportation Account—State

Appropriation: For transfer to the Electric Vehicle

Charging Infrastructure Account—State \$1,000,000

~~((29))~~ (26) Multimodal Transportation Account—State

Appropriation: For transfer to the Complete Streets

Grant Program Account—State \$10,200,000

~~((30))~~ (27) (a) Transportation Partnership

Account—State Appropriation: For transfer to the Capital Vessel Replacement Account—State ~~((96,030,000))~~

\$35,547,000

(b) The amount transferred in this subsection represents proceeds from the sale of bonds authorized in RCW 47.10.873.

~~((31))~~ (28) Freight Mobility Multimodal Account—State

Appropriation: For transfer to the Multimodal Transportation

Account—State \$7,296,000

~~((32))~~ (29) Connecting Washington Account—State

Appropriation: For transfer to the Motor Vehicle

Account—State \$115,000,000

(30) Motor Vehicle Account—State Appropriation:

For transfer to the Alaskan Way Viaduct Replacement

Project Account—State \$11,783,000

(31) Motor Vehicle Account—State
Appropriation:

For transfer to the 520 Civil
Penalties Account—State \$6,000,000

(32) Motor Vehicle Account—State
Appropriation:

For transfer to the Transportation
2003 Account

(Nickel Account)—State \$13,000,000

NEW SECTION. Sec. 1107. A new section is added to 2020 c 219 (uncodified) to read as follows:**FOR THE OFFICE OF FINANCIAL MANAGEMENT—AMERICAN RESCUE PLAN ACT OF 2021—REVENUE LOSS DEPOSITS**

Coronavirus State Fiscal Recovery Fund—Federal

Appropriation \$315,866,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation is provided solely for expenditure into accounts in the amounts specified in subsection (2) of this section. These amounts reflect revenue losses to state transportation accounts in state fiscal year 2020 relative to revenues collected in state fiscal year 2019 and shall be used to maintain government services pursuant to the federal American rescue plan act of 2021.

(2) The appropriation must be distributed to the following accounts in the amounts designated:

Aeronautics Account—State
\$328,000

State Patrol Highway Account—State
\$12,358,000

Puget Sound Capital Construction Account—State \$790,000

Transportation Partnership Account—State \$16,530,000

Highway Safety Account—State
\$8,218,000

Motor Vehicle Account—State
\$99,416,000

Puget Sound Ferry Operations Account—State \$30,742,000

Connecting Washington Account—State
\$17,246,000

Special Category C Account—State
\$1,086,000

Multimodal Transportation Account—State \$115,609,000

Transportation 2003 Account (Nickel Account)—State \$13,543,000

MISCELLANEOUS

NEW SECTION. Sec. 1201. 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. 1202. 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."

Correct the title.

Representative Fey moved the adoption of amendment (500) to the striking amendment (488):

On page 4, line 27, after "1," strike "2019" and insert "2021"

On page 51, line 28, strike "\$57,092,000" and insert "\$47,092,000"

On page 52, line 5, correct the total

On page 73, line 6, after "(15)" insert "(a)"

On page 73, after line 8, insert the following:

"(b) The amount transferred in this subsection represents repayment of debt service incurred for the construction of the Hybrid Electric Olympic Class (144-auto) Vessel #5 project (L2000329)."

On page 73, line 29, strike "\$28,660,000" and insert "\$22,884,000"

On page 86, line 32, after "During the" strike "2019-2021" and insert "2021-2023"

On page 115, beginning on line 8, strike all of subsection (c) and insert the following:

~~"((c) \$150,000 of the motor vehicle account state appropriation is provided solely for analysis of potential impacts of a road usage charge on communities of color, low income households, vulnerable populations, and displaced communities. The analysis must include an assessment~~

~~of potential mitigation measures to address these potential impacts. These funds must be held in unallotted status during the 2019-2021 fiscal biennium, and may only be used after the commission has provided notice to the office of financial management that it has exhausted all efforts to secure federal funds from the federal surface transportation system funding alternatives grant program under (b) of this subsection without successfully securing federal funding for the further study of a road usage charge. A year-end update on the status of this effort, if undertaken prior to the end of calendar year 2020, must be provided to the governor's office and the transportation committees of the legislature by January 1, 2021.)~~)"

On page 146, line 34, after "(5)" strike "\$3,000,000" and insert "~~(\$3,000,000)~~ \$121,000"

On page 147, beginning on line 1, after "(6)" strike all material through "(7)" on line 9 and insert "~~(\$123,000 of the Interstate 405 and state route number 167 express toll lanes account state appropriation, \$207,000 of the state route number 520 corridor account state appropriation, \$121,000 of the Tacoma Narrows toll bridge account state appropriation, and \$104,000 of the Alaskan Way viaduct replacement project account state appropriation are provided solely for the transportation planning, data, and research program's proportional share of time spent supporting tolling operations for the respective tolling facilities.~~

~~(7))~~)"

ReNUMBER the remaining subsections consecutively and correct any internal references accordingly.

On page 166, line 17, strike "\$64,126,000" and insert "\$74,126,000"

On page 167, line 1, correct the total

On page 167, line 38, after "~~(\$24,910,000)~~" strike "\$19,123,000" and insert "\$19,911,000"

On page 197, line 27, strike "\$22,000,000" and insert "\$29,000,000"

On page 198, line 16, strike "\$1,434,000" and insert "~~(\$1,434,000)~~ \$1,666,000"

On page 199, beginning on line 18 of the striking amendment, strike all

material through "(17)" on line 22 and insert "~~(\$19) Capital Vessel Replacement~~

~~Account State Appropriation: For transfer to the~~

~~Transportation Partnership Account State \$2,312,000~~

~~(20))~~ (16)"

ReNUMBER the remaining subsections consecutively and correct any internal references accordingly.

On page 199, line 24, strike "\$15,858,000" and insert "~~(\$15,858,000)~~ \$15,577,000"

FISCAL IMPACT: No net change to appropriated levels.

Representatives Fey and Barkis spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (500) to the striking amendment (488) was adopted.

Representative Kraft moved the adoption of amendment (490) to the striking amendment (488):

On page 12, after line 3 of the striking amendment, insert the following:

"(8) \$400,000 of the motor vehicle account--state appropriation is for a consultant study to evaluate options for an additional bridge or other connection (non-transit related) west of Interstate 5 between southwest Washington and northwest Oregon to facilitate movement of commuter vehicles and freight trucks. The study must provide high-level conceptual designs of the options put forth and include a cost estimate for each option. A report on the study is due to the transportation committees of the legislature and the Joint Oregon-Washington Legislative Action Committee by December 1, 2022."

Representative Kraft spoke in favor of the adoption of the amendment to the striking amendment.

Representative Wylie spoke against the adoption of the amendment to the striking amendment.

Amendment (490) to the striking amendment (488) was not adopted.

Representative Goehner moved the adoption of amendment (491) to the striking amendment (488):

On page 12, after line 29 of the striking amendment, insert the following:

"(3) (a) The transportation budget is currently reliant on vehicle and driver related fees. Motor vehicle registrations, driver licenses, tolls, and the motor vehicle fuel tax provide the primary revenues for the transportation budget. These user revenues no longer adequately support the transportation system's needs. Many of the transportation modes have no or little ability to generate revenue, yet are important elements of a functioning transportation network. Providing transportation options that do not involve passenger vehicles is critical. The tax burden in the transportation budget falls on people that own and drive vehicles. It fails to provide the money needed for the system quality that the people of Washington want.

(b) Therefore, the commission is directed to evaluate, identify, and consider agencies, programs, and activities that are currently funded in the transportation budget that provide a public good that might be paid for using other revenues. The commission is directed to make recommendations for potential changes to funding sources for the transportation system with the goal of providing funding to maintain existing transportation assets in a state of good repair without exclusively relying on vehicle owners or drivers as the revenue source. Preliminary findings must be presented to the Joint Transportation Committee by September 30, 2022, and a final report issued to the appropriate committees of the legislature by December 1, 2022."

Representatives Goehner and Slatter spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (491) to the striking amendment (488) was adopted.

Representative Fey moved the adoption of amendment (498) to the striking amendment (488):

On page 36, line 32 of the striking amendment, increase the motor vehicle account-state appropriation by \$1,500,000

On page 37, line 6 of the striking amendment, correct the total.

On page 39, after line 3 of the striking amendment, insert the following:

"(8) \$1,500,000 of the motor vehicle account-state appropriation is provided solely for a study on the need for additional connectivity in the area between SR 161, SR 7, SR 507, and I-5 in South Pierce County."

Representatives Fey and Barkis spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (498) to the striking amendment (488) was adopted.

Representative Barkis moved the adoption of amendment (497) to the striking amendment (488):

On page 46, line 14 of the striking amendment, increase the multimodal transportation account-state appropriation by \$500,000

On page 46, line 19 of the striking amendment, correct the total.

On page 46, line 21 of the striking amendment, after "limitations:" insert "(1)"

On page 46, after line 31 of the striking amendment, insert the following:

"(2) Consistent with the ongoing planning and service improvement for the intercity passenger rail program, \$500,000 of the multimodal transportation account-state is provided solely for the Cascades service development plan. This funding is to be used to analyze current and future market conditions and to develop a structured assessment of service options and goals based on anticipated demand and the results of the state and federally required 2019 state rail plan, including identifying implementation alternatives to meet the future service goals for the Amtrak Cascades route. The work must be consistent with federal railroad administration guidance and direction on developing service development plans. It must also leverage the \$500,000 in federal funding appropriated for development of a service development plan and comply with the planning and grant award obligations of the consolidated rail infrastructure and safety improvements (CRISI) program. A status report must be provided to the

transportation committees of the legislature by June 30, 2022."

Representatives Barkis and Bronoske spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (497) to the striking amendment (488) was adopted.

Representative Walsh moved the adoption of amendment (503) to the striking amendment (488):

On page 51, line 35 of the striking amendment, increase the multimodal transportation account-state appropriation by \$224,000,000

On page 52, line 5 of the striking amendment, correct the total.

On page 57, after line 9 of the striking amendment, insert the following:

"(19) \$224,000,000 of the multimodal transportation account-state appropriation is provided solely for the Fish Passage Barrier Removal project (OBI4001) with the intent of increasing the total funding to this project to \$1 billion in the 2021-2023 fiscal biennium without additional bonding."

ReNUMBER the remaining subsections consecutively and correct any internal references accordingly.

Representatives Walsh, Orcutt and Barkis spoke in favor of the adoption of the amendment to the striking amendment.

Representative Ramos spoke against the adoption of the amendment to the striking amendment.

Amendment (503) to the striking amendment (488) was not adopted.

Representative Fey moved the adoption of amendment (510) to the striking amendment (488):

On page 51, line 35 of the striking amendment, increase the multimodal transportation account-state appropriation by \$2,500,000

On page 52, line 5 of the striking amendment, correct the total.

On page 53, line 39 of the striking amendment, after "appropriation," strike "\$2,300,000" and insert "\$4,800,000"

On page 54, after line 29 of the striking amendment, insert the following:

"(e) Of the amounts provided in this subsection, \$2,500,000 of the multimodal transportation account-state appropriation is provided solely for segment 2 of the state route 167 completion project shared-use path to provide connections to the interchange of state route 167 at 54th to the intersection of state route 509 and Taylor way in Tacoma."

Representatives Fey and Barkis spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (510) to the striking amendment (488) was adopted.

Representative Barkis moved the adoption of amendment (489) to the striking amendment (488):

On page 59, after line 17 of the striking amendment, insert the following:

"Transportation Preservation and Maintenance Account--State Appropriation...\$360,000,000"

On page 59, line 18 of the striking amendment, correct the total.

On page 61, after line 23 of the striking amendment, insert the following:

"(9) \$360,000,000 of the transportation preservation and maintenance account-state appropriation is provided solely for preservation activities in accordance with chapter . . . (House Bill No. 1010), Laws of 2021 (motor vehicle sales tax). If chapter . . . (House Bill No. 1010), Laws of 2021 (motor vehicle sales tax) is not enacted by June 30, 2021, the entire transportation preservation and maintenance account-state appropriation provided in this section lapses."

Representatives Barkis, MacEwen and McCaslin spoke in favor of the adoption of the amendment to the striking amendment.

Representative Riccelli spoke against the adoption of the amendment to the striking amendment.

Amendment (489) to the striking amendment (488) was not adopted.

Representative Fey moved the adoption of amendment (511) to the striking amendment (488):

On page 68, after line 21 of the striking amendment, insert the following:

"(7) \$6,500,000 of the motor vehicle account--state appropriation designated for the Edmonds street waterfront connector project (L1000177) in LEAP Transportation Document 2012-2 ALL PROJECTS as developed March 22, 2021, Program Local Programs Program (z) is redesignated and provided solely for the SR 99 revitalization in Edmonds project (NEDMOND)."

Representatives Fey and Barkis spoke in favor of the adoption of the amendment to the striking amendment.

Amendment (511) to the striking amendment (488) was adopted.

Representative Caldier moved the adoption of amendment (504) to the striking amendment (488):

On page 72, beginning on line 4 of the striking amendment, strike all of subsection (3) and insert the following:

"(3) (a) Motor Vehicle Account-State Appropriation: For transfer to the Tacoma Narrows Toll Bridge Account-State...\$51,000,000

(b) It is the intent of the legislature that the transfer provided in this subsection, which represents a portion of the federal coronavirus response and relief supplemental appropriations act funds that were deposited into the state motor vehicle account, is used to:

(i) provide sufficient resources to make up for toll revenue losses during the COVID-19 pandemic,

(ii) replace a transfer of funds from the transportation partnership account that would otherwise be a state contribution loan, and

(iii) avoid the necessity of a twenty-five cent toll rate increase for the Tacoma Narrows Bridge during the 2021-2023 fiscal biennium."

Representatives Caldier, Caldier (again) and Young spoke in favor of the adoption of the amendment to the striking amendment.

Representative Fey spoke against the adoption of the amendment to the striking amendment.

Amendment (504) to the striking amendment (488) was not adopted.

Representative Caldier moved the adoption of amendment (505) to the striking amendment (488):

On page 72, line 6 of the striking amendment, decrease the transportation partnership account-state appropriation transfer by \$32,748,000

On page 72, after line 12 of the striking amendment, insert the following:

"(4) (a) Motor Vehicle Account-State Appropriation: For transfer to the Tacoma Narrows Toll Bridge Account-State...\$32,748,000

(b) It is the intent of the legislature that the transfer provided in this subsection, which represents a portion of the federal coronavirus response and relief supplemental appropriations act funds that were deposited into the state motor vehicle account, is used to:

(i) provide sufficient resources to make up for toll revenue losses during the the COVID-19 pandemic, and

(ii) replace a transfer of funds from the transportation partnership account that would otherwise be a state contribution loan."

Renumber the remaining subsections consecutively and correct any internal references accordingly.

Representative Caldier spoke in favor of the adoption of the amendment to the striking amendment.

Representative Fey spoke against the adoption of the amendment to the striking amendment.

Amendment (505) to the striking amendment (488) was not adopted.

Representative Orcutt moved the adoption of amendment (493) to the striking amendment (488):

On page 103, after line 2, insert the following:

"**Sec. 719.** RCW 46.17.350 and 2019 c 44 s 4 are each amended to read as follows:

(1) (~~Before~~) Except as provided in subsection (3) of this section, before accepting an application for a vehicle registration, the department, county

auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following vehicle license fee by vehicle type:

VEHICLE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Auto stage, six seats or less	\$ 30.00	\$ 30.00	RCW 46.68.030
(b) Camper	\$ 4.90	\$ 3.50	RCW 46.68.030
(c) Commercial trailer	\$ 34.00	\$ 34.00	RCW 46.68.035
(d) For hire vehicle, six seats or less	\$ 30.00	\$ 30.00	RCW 46.68.030
(e) Mobile home (if registered)	\$ 30.00	\$ 30.00	RCW 46.68.030
(f) Moped	\$ 30.00	\$ 30.00	RCW 46.68.030
(g) Motor home	\$ 30.00	\$ 30.00	RCW 46.68.030
(h) Motorcycle	\$ 30.00	\$ 30.00	RCW 46.68.030
(i) Off-road vehicle	\$ 18.00	\$ 18.00	RCW 46.68.045
(j) Passenger car	\$ 30.00	\$ 30.00	RCW 46.68.030
(k) Private use single-axle trailer	\$ 15.00	\$ 15.00	RCW 46.68.035
(l) Snowmobile	\$ 50.00	\$ 50.00	RCW 46.68.350
(m) Snowmobile, vintage	\$ 12.00	\$ 12.00	RCW 46.68.350
(n) Sport utility vehicle	\$ 30.00	\$ 30.00	RCW 46.68.030
(o) Tow truck	\$ 30.00	\$ 30.00	RCW 46.68.030
(p) Trailer, over 2000 pounds	\$ 30.00	\$ 30.00	RCW 46.68.030
(q) Travel trailer	\$ 30.00	\$ 30.00	RCW 46.68.030
(r) Wheeled all-	\$ 12.00	\$ 12.00	RCW 46.09.540

VEHICLE TYPE INITIAL FEE RENEWAL FEE DISTRIBUTED UNDER
 terrain vehicle, on-road use

(s) \$ 18.00 \$ 18.00 RCW 46.09.510
 Wheeled all-terrain vehicle, off-road use

(2) The vehicle license fee required in subsection (1) of this section is in addition to the filing fee required under RCW 46.17.005, and any other fee or tax required by law.

(3) For the 2021-2023 fiscal biennium, no vehicle license fee imposed under this section shall exceed \$16.75.

Sec. 720. RCW 46.17.355 and 2015 3rd sp.s. c 44 s 201 are each amended to read as follows:

(1) (a) For vehicle registrations that are due or become due before July 1, 2016, in lieu of the vehicle license fee required under RCW 46.17.350 and before accepting an application for a vehicle registration for motor vehicles described in RCW 46.16A.455, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following license fee by weight:

WEIGHT	SCHEDULE A	SCHEDULE B
4,000 pounds	\$ 38.00	\$ 38.00
6,000 pounds	\$ 48.00	\$ 48.00
8,000 pounds	\$ 58.00	\$ 58.00
10,000 pounds	\$ 60.00	\$ 60.00
12,000 pounds	\$ 77.00	\$ 77.00
14,000 pounds	\$ 88.00	\$ 88.00
16,000 pounds	\$ 100.00	\$ 100.00

WEIGH T	SCHEDUL E A	SCHEDUL E B	WEIGH T	SCHEDUL E A	SCHEDUL E B
18,000 pounds	\$ 152.00	\$ 152.00	54,000 pounds	\$ 732.00	\$ 822.00
20,000 pounds	\$ 169.00	\$ 169.00	56,000 pounds	\$ 773.00	\$ 863.00
22,000 pounds	\$ 183.00	\$ 183.00	58,000 pounds	\$ 804.00	\$ 894.00
24,000 pounds	\$ 198.00	\$ 198.00	60,000 pounds	\$ 857.00	\$ 947.00
26,000 pounds	\$ 209.00	\$ 209.00	62,000 pounds	\$ 919.00	\$ 1,009.00
28,000 pounds	\$ 247.00	\$ 247.00	64,000 pounds	\$ 939.00	\$ 1,029.00
30,000 pounds	\$ 285.00	\$ 285.00	66,000 pounds	\$ 1,046.00	\$ 1,136.00
32,000 pounds	\$ 344.00	\$ 344.00	68,000 pounds	\$ 1,091.00	\$ 1,181.00
34,000 pounds	\$ 366.00	\$ 366.00	70,000 pounds	\$ 1,175.00	\$ 1,265.00
36,000 pounds	\$ 397.00	\$ 397.00	72,000 pounds	\$ 1,257.00	\$ 1,347.00
38,000 pounds	\$ 436.00	\$ 436.00	74,000 pounds	\$ 1,366.00	\$ 1,456.00
40,000 pounds	\$ 499.00	\$ 499.00	76,000 pounds	\$ 1,476.00	\$ 1,566.00
42,000 pounds	\$ 519.00	\$ 609.00	78,000 pounds	\$ 1,612.00	\$ 1,702.00
44,000 pounds	\$ 530.00	\$ 620.00	80,000 pounds	\$ 1,740.00	\$ 1,830.00
46,000 pounds	\$ 570.00	\$ 660.00	82,000 pounds	\$ 1,861.00	\$ 1,951.00
48,000 pounds	\$ 594.00	\$ 684.00	84,000 pounds	\$ 1,981.00	\$ 2,071.00
50,000 pounds	\$ 645.00	\$ 735.00	86,000 pounds	\$ 2,102.00	\$ 2,192.00
52,000 pounds	\$ 678.00	\$ 768.00	88,000 pounds	\$ 2,223.00	\$ 2,313.00

WEIGH T	SCHEDUL E A	SCHEDUL E B	WEIGH T	SCHEDUL E A	SCHEDUL E B
90,000 pounds	\$ 2,344.00	\$ 2,434.00	12,000 pounds	\$ 81.00	\$ 81.00
92,000 pounds	\$ 2,464.00	\$ 2,554.00	14,000 pounds	\$ 88.00	\$ 88.00
94,000 pounds	\$ 2,585.00	\$ 2,675.00	16,000 pounds	\$ 100.00	\$ 100.00
96,000 pounds	\$ 2,706.00	\$ 2,796.00	18,000 pounds	\$ 152.00	\$ 152.00
98,000 pounds	\$ 2,827.00	\$ 2,917.00	20,000 pounds	\$ 169.00	\$ 169.00
100,000 pounds	\$ 2,947.00	\$ 3,037.00	22,000 pounds	\$ 183.00	\$ 183.00
102,000 pounds	\$ 3,068.00	\$ 3,158.00	24,000 pounds	\$ 198.00	\$ 198.00
104,000 pounds	\$ 3,189.00	\$ 3,279.00	26,000 pounds	\$ 209.00	\$ 209.00
105,500 pounds	\$ 3,310.00	\$ 3,400.00	28,000 pounds	\$ 247.00	\$ 247.00
			30,000 pounds	\$ 285.00	\$ 285.00
			32,000 pounds	\$ 344.00	\$ 344.00
			34,000 pounds	\$ 366.00	\$ 366.00
			36,000 pounds	\$ 397.00	\$ 397.00
			38,000 pounds	\$ 436.00	\$ 436.00
			40,000 pounds	\$ 499.00	\$ 499.00
			42,000 pounds	\$ 519.00	\$ 609.00
			44,000 pounds	\$ 530.00	\$ 620.00
			46,000 pounds	\$ 570.00	\$ 660.00

(b) (i) For vehicle registrations that are due or become due on or after July 1, 2016, in lieu of the vehicle license fee required under RCW 46.17.350 and before accepting an application for a vehicle registration for motor vehicles described in RCW 46.16A.455, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following license fee by weight:

WEIGH T	SCHEDUL E A	SCHEDUL E B
4,000 pounds	\$ 53.00	\$ 53.00
6,000 pounds	\$ 73.00	\$ 73.00
8,000 pounds	\$ 93.00	\$ 93.00
10,000 pounds	\$ 93.00	\$ 93.00

WEIGH T	SCHEDUL E A	SCHEDUL E B	WEIGH T	SCHEDUL E A	SCHEDUL E B
48,000 pounds	\$ 594.00	\$ 684.00	84,000 pounds	\$ 1,981.00	\$ 2,071.00
50,000 pounds	\$ 645.00	\$ 735.00	86,000 pounds	\$ 2,102.00	\$ 2,192.00
52,000 pounds	\$ 678.00	\$ 768.00	88,000 pounds	\$ 2,223.00	\$ 2,313.00
54,000 pounds	\$ 732.00	\$ 822.00	90,000 pounds	\$ 2,344.00	\$ 2,434.00
56,000 pounds	\$ 773.00	\$ 863.00	92,000 pounds	\$ 2,464.00	\$ 2,554.00
58,000 pounds	\$ 804.00	\$ 894.00	94,000 pounds	\$ 2,585.00	\$ 2,675.00
60,000 pounds	\$ 857.00	\$ 947.00	96,000 pounds	\$ 2,706.00	\$ 2,796.00
62,000 pounds	\$ 919.00	\$ 1,009.00	98,000 pounds	\$ 2,827.00	\$ 2,917.00
64,000 pounds	\$ 939.00	\$ 1,029.00	100,000 pounds	\$ 2,947.00	\$ 3,037.00
66,000 pounds	\$ 1,046.00	\$ 1,136.00	102,000 pounds	\$ 3,068.00	\$ 3,158.00
68,000 pounds	\$ 1,091.00	\$ 1,181.00	104,000 pounds	\$ 3,189.00	\$ 3,279.00
70,000 pounds	\$ 1,175.00	\$ 1,265.00	105,500 pounds	\$ 3,310.00	\$ 3,400.00
72,000 pounds	\$ 1,257.00	\$ 1,347.00			
74,000 pounds	\$ 1,366.00	\$ 1,456.00			
76,000 pounds	\$ 1,476.00	\$ 1,566.00			
78,000 pounds	\$ 1,612.00	\$ 1,702.00			
80,000 pounds	\$ 1,740.00	\$ 1,830.00			
82,000 pounds	\$ 1,861.00	\$ 1,951.00			

(ii) For vehicle registrations of vehicles in the weight classes up to and including 10,000 pounds that are due or become due during the 2021-2023 fiscal biennium, the license fee by weight is \$16.75.

(2) 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.

(3) If the resultant gross weight is not listed in the table provided in subsection (1) of this section, it must be increased to the next higher weight.

(4) The license fees provided in subsection (1) of this section and the freight project fee provided in subsection (6) of this section are in

addition to the filing fee required under RCW 46.17.005 and any other fee or tax required by law.

(5) The license fee based on declared gross weight as provided in subsection (1) of this section must be distributed under RCW 46.68.035.

(6) For vehicle registrations that are due or become due on or after July 1, 2016, in addition to the license fee based on declared gross weight as provided in subsection (1) of this section, the department, county auditor or other agent, or subagent appointed by the director must require an applicant with a vehicle with a declared gross weight of more than 10,000 pounds, unless specifically exempt, to pay a freight project fee equal to fifteen percent of the license fee provided in subsection (1) of this section, rounded to the nearest whole dollar, which must be distributed under RCW 46.68.035.

(7) For vehicle registrations that are due or become due on or after July 1, 2022, in addition to the license fee based on declared gross weight as provided in subsection (1) of this section, the department, county auditor or other agent, or subagent appointed by the director must require an applicant with a vehicle with a declared gross weight of less than or equal to 12,000 pounds, unless specifically exempt, to pay an additional weight fee of ten dollars, which must be distributed under RCW 46.68.035, except that during the 2021-2023 fiscal biennium, the additional weight fee of \$10 imposed in this subsection is not required.

Sec. 721. RCW 46.17.365 and 2015 3rd sp.s. c 44 s 202 are each amended to read as follows:

(1) ~~((A))~~ Except for the 2021-2023 fiscal biennium, a person applying for a motor vehicle registration and paying the vehicle license fee required in RCW 46.17.350(1) (a), (d), (e), (h), (j), (n), and (o) shall pay a motor vehicle weight fee in addition to all other fees and taxes required by law.

(a) For vehicle registrations that are due or become due before July 1, 2016, the motor vehicle weight fee:

(i) Must be based on the motor vehicle scale weight;

(ii) Is the difference determined by subtracting the vehicle license fee

required in RCW 46.17.350 from the license fee in Schedule B of RCW 46.17.355, plus two dollars; and

(iii) Must be distributed under RCW 46.68.415.

(b) For vehicle registrations that are due or become due on or after July 1, 2016, the motor vehicle weight fee:

(i) Must be based on the motor vehicle scale weight as follows:

WEIGHT	FEE
4,000 pounds	\$ 25.00
6,000 pounds	\$ 45.00
8,000 pounds	\$ 65.00
16,000 pounds and over	\$ 72.00;

(ii) If the resultant motor vehicle scale weight is not listed in the table provided in (b)(i) of this subsection, must be increased to the next highest weight; and

(iii) Must be distributed under RCW 46.68.415 unless prior to July 1, 2023, the actions described in (b)(iii)(A) or (B) of this subsection occur, in which case the portion of the revenue that is the result of the fee increased in this subsection must be distributed to the connecting Washington account created under RCW 46.68.395.

(A) Any state agency files a notice of rule making under chapter 34.05 RCW for a rule regarding a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(B) Any state agency otherwise enacts, adopts, orders, or in any way implements a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(C) Nothing in this subsection acknowledges, establishes, or creates legal authority for the department of ecology or any other state agency to enact, adopt, order, or in any way implement a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(2) A person applying for a motor home vehicle registration shall, in lieu of the motor vehicle weight fee required in subsection (1) of this section, pay a motor home vehicle weight fee of seventy-five dollars in addition to all other fees and taxes required by law. The motor home vehicle weight fee must be distributed under RCW 46.68.415.

(3) Beginning July 1, 2022, in addition to the motor vehicle weight fee as provided in subsection (1) of this section, the department, county auditor or other agent, or subagent appointed by the director must require an applicant to pay an additional weight fee of ten dollars, which must be distributed to the multimodal transportation account under RCW 47.66.070 unless prior to July 1, 2023, the actions described in (a) or (b) of this subsection occur, in which case the portion of the revenue that is the result of the fee increased in this subsection must be distributed to the connecting Washington account created under RCW 46.68.395, except that during the 2021-2023 fiscal biennium, the additional weight fee of \$10 imposed in this subsection is not required.

(a) Any state agency files a notice of rule making under chapter 34.05 RCW for a rule regarding a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(b) Any state agency otherwise enacts, adopts, orders, or in any way implements a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(c) Nothing in this subsection acknowledges, establishes, or creates legal authority for the department of ecology or any other state agency to enact, adopt, order, or in any way implement a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(4) The department shall:

(a) Rely on motor vehicle empty scale weights provided by vehicle manufacturers, or other sources defined by the department, to determine the weight of each motor vehicle; and

(b) Adopt rules for determining weight for vehicles without manufacturer empty scale weights."

Correct the title.

FISCAL IMPACT: (1) No net change to appropriated levels.

(2) Reduces biennial transportation revenues by an estimated \$780,000,000.

POINT OF ORDER

Representative Stonier requested a scope and object ruling on amendment (493).

SPEAKER'S RULING

"The bill before us is the omnibus transportation budget for the 2021-23 biennium.

The amendment changes the amount of statutorily established individual vehicle registration fees that may be collected during the biennium.

There is frequently a relationship between fee revenue and the amount of funding that a budget must provide to operate a regulatory program. Here, however, the legislature has established a comprehensive fee structure in statute that establishes fees at specific dollar amounts for vehicle registrations. A wholesale suspension of that statutory scheme, even for the biennium, is outside the scope and object of a budget bill.

The Speaker therefore finds and rules that the amendment is outside the scope and object of the bill.

The point of order is well taken."

Striking amendment (488) as amended, was adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill, as amended by the House, was placed on final passage.

Representatives Fey, Robertson, Wylie, Eslick, Ramos and Barkis spoke in favor of the passage of the bill.

Representative Walsh spoke against the passage of the bill.

The Speaker (Representative Orwall presiding) stated the question before the House to be the final passage of Substitute Senate Bill No. 5165, as amended by the House.

ROLL CALL

The Clerk called the roll on the final passage of Substitute Senate Bill No. 5165, as amended by the House, and the bill passed the House by the following vote: Yeas, 87; Nays, 11; Absent, 0; Excused, 0.

Voting yea: Representatives Abbarno, Barkis, Bateman, Berg, Bergquist, Berry, Boehnke, Bronoske, Callan, Chambers, Chapman, Chopp, Cody, Davis, Dent, Dolan, Duerr, Dye, Entenman, Eslick, Fey, Fitzgibbon, Frame, Gilday, Goehner, Goodman, Graham, Gregerson, Griffey, Hackney, Hansen, Harris, Harris-Talley, Hoff, Jacobsen, J. Johnson, Kirby, Klicker, Klippert, Kloba, Kretz, Leavitt, Lekanoff, Lovick, MacEwen, Macri, Maycumber, Morgan, Mosbrucker, Ormsby, Ortiz-Self, Orwall, Paul, Peterson, Pollet, Ramel, Ramos, Riccelli, Robertson, Rude, Rule, Ryu,

Santos, Schmick, Sells, Senn, Shewmake, Simmons, Slatter, Springer, Steele, Stokesbary, Stonier, Sullivan, Sutherland, Taylor, Thai, Tharinger, Valdez, Vick, Volz, Walen, Wicks, Wilcox, Wylie, Ybarra and Mme. Speaker.

Voting nay: Representatives Caldier, Chandler, Chase, Corry, Dufault, Kraft, McCaslin, McEntire, Orcutt, Walsh and Young.

SUBSTITUTE SENATE BILL NO. 5165, as amended by the House, having received the necessary constitutional majority, was declared passed.

HOUSE BILL NO. 1080, by Representatives Tharinger, Leavitt, Wylie, Callan and Hackney

Concerning the capital budget.

The bill was read the second time.

There being no objection, Substitute House Bill No. 1080 was substituted for House Bill No. 1080 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 1080 was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Tharinger, Steele, Callan and Abbarno spoke in favor of the passage of the bill.

The Speaker (Representative Orwall presiding) stated the question before the House to be the final passage of Substitute House Bill No. 1080.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 1080, and the bill passed the House by the following vote: Yeas, 98; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Representatives Abbarno, Barkis, Bateman, Berg, Bergquist, Berry, Boehnke, Bronoske, Caldier, Callan, Chambers, Chandler, Chapman, Chase, Chopp, Cody, Corry, Davis, Dent, Dolan, Duerr, Dufault, Dye, Entenman, Eslick, Fey, Fitzgibbon, Frame, Gilday, Goehner, Goodman, Graham, Gregerson, Griffey, Hackney, Hansen, Harris, Harris-Talley, Hoff, Jacobsen, J. Johnson, Kirby, Klicker, Klippert, Kloba, Kraft, Kretz, Leavitt, Lekanoff, Lovick, MacEwen, Macri, Maycumber, McCaslin, McEntire, Morgan, Mosbrucker, Orcutt, Ormsby, Ortiz-Self, Orwall, Paul, Peterson, Pollet, Ramel, Ramos, Riccelli, Robertson, Rude, Rule, Ryu, Santos, Schmick, Sells, Senn, Shewmake, Simmons, Slatter, Springer, Steele, Stokesbary, Stonier, Sullivan, Sutherland, Taylor, Thai, Tharinger, Valdez, Vick, Volz, Walen, Walsh, Wicks, Wilcox, Wylie, Ybarra, Young and Mme. Speaker.

SUBSTITUTE HOUSE BILL NO. 1080, having received the necessary constitutional majority, was declared passed.

There being no objection, the House reverted to the fifth order of business.

**SUPPLEMENTAL
REPORTS OF STANDING COMMITTEES**

April 1, 2021

E2SSB 5022 Prime Sponsor, Committee on Ways & Means: Managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and requiring recycled content in plastic beverage containers. (REVISED FOR ENGROSSED: Managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and addressing plastic packaging.) Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Environment & Energy.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** FINDINGS—INTENT. (1) The legislature finds that minimum recycled content requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers, bans on problematic and unnecessary plastic packaging, and standards for customer opt-in for food service packaging and accessories are among actions needed to improve the state's recycling system as well as reduce litter.

(2) By implementing a minimum recycled content requirement for plastic beverage containers, trash bags, and household cleaning and personal care product containers; prohibiting the sale and distribution of certain expanded polystyrene products; and establishing optional serviceware requirements as provided for in this chapter; the legislature intends to take another step towards ensuring plastic packaging and other packaging materials are reduced, recycled, and reused.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Beverage" means beverages identified in (a) through (f) of this subsection, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

- (a) Water and flavored water;
- (b) Beer or other malt beverages;
- (c) Wine;
- (d) Distilled spirits;
- (e) Mineral water, soda water, and similar carbonated soft drinks; and

(f) Any beverage other than those specified in (a) through (e) of this subsection, except infant formula as defined in 21 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the department.

(2) "Beverage manufacturing industry" means an association that represents beverage producers.

(3) "Condiment packaging" means packaging used to deliver single-serving condiments to customers. Condiment packaging includes, but is not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly, jam, and soy sauce.

(4) (a) "Covered product" means an item in one of the following categories subject to minimum postconsumer recycled content requirements:

- (i) Plastic trash bags;
- (ii) Household cleaning and personal care products that use plastic household cleaning and personal care product containers; and
- (iii) Beverages that use plastic beverage containers.

(b) "Covered product" does not include any type of container or bag for which the state is preempted from regulating content of the container material or bag material under federal law.

(5) "Dairy milk" means a beverage that designates milk as the predominant

(first) ingredient in the ingredient list on the container's label.

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

(7) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(8) "Food service business" means a business selling or providing food for consumption on or off the premises, and includes full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, home delivery services, delivery services provided through an online application, and business or institutional cafeterias.

(9) "Food service product" means a product intended for one-time use and used for food or drink offered for sale or use. Food service products include, but are not limited to, containers, plates, bowls, cups, lids, beverage containers, meat trays, deli rounds, utensils, sachets, straws, condiment packaging, clamshells and other hinged or lidded containers, wrap, and portion cups.

(10) "Household cleaning and personal care product" means any of the following:

- (a) Laundry detergents, softeners, and stain removers;
- (b) Household cleaning products;
- (c) Liquid soap;
- (d) Shampoo, conditioner, styling sprays and gels, and other hair care products; or
- (e) Lotion, moisturizer, facial toner, and other skin care products.

(11) "Household cleaning and personal care product manufacturing industry" means an association that represents companies that manufacture household cleaning and personal care products.

(12) "Licensee" means a manufacturer or entity who licenses a brand and manufactures a covered product under that brand.

(13) "Oral nutritional supplement" means a manufactured liquid, powder capable of being reconstituted, or solid product that contains a combination of carbohydrates, proteins, fats, fiber, vitamins, and minerals intended to supplement a portion of a patient's nutrition intake.

(14) "Plastic beverage container" means a bottle or other rigid container that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins designed to contain a beverage. Plastic beverage container does not include:

(a) Refillable beverage containers, such as containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse;

(b) Rigid plastic containers or plastic bottles that are or are used for medical devices, medical products that are required to be sterile, nonprescription and prescription drugs, or dietary supplements as defined in RCW 82.08.0293;

(c) Bladders or pouches that contain wine; or

(d) Liners, caps, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container.

(15)(a) "Plastic household cleaning and personal care product container" means a bottle, jug, or other rigid container with a neck or mouth narrower than the base, and:

(i) A minimum capacity of eight fluid ounces or its equivalent volume;

(ii) A maximum capacity of five fluid gallons or its equivalent volume;

(iii) That is capable of maintaining its shape when empty;

(iv) Comprised solely of one or multiple plastic resins; and

(v) Containing a household cleaning or personal care product.

(b) "Plastic household cleaning and personal care product container" does not include:

(i) Refillable household cleaning and personal care product containers, such as containers that are sufficiently durable

for multiple rotations of their original or similar purpose and are intended to function in a system of reuse; and

(ii) Rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, and nonprescription and prescription drugs, dietary supplements as defined in RCW 82.08.0293, and packaging used for those products.

(16) "Plastic trash bag" means a bag that is made of noncompostable plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded or recycled, and includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag. "Plastic trash bag" does not include any compostable bags meeting the requirements of chapter 70A.455 RCW.

(17) "Plastic trash bag manufacturing industry" means an association that represents companies that manufacture plastic trash bags.

(18) "Postconsumer recycled content" means the content of a covered product made of recycled materials derived specifically from recycled material generated by households or by commercial, industrial, and institutional facilities in their role as end users of a product that can no longer be used for its intended purpose. "Postconsumer recycled content" includes returns of material from the distribution chain.

(19)(a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

(b) "Producer" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;

(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or

(iii) De minimis producers that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

(A) Less than one ton of a single category of plastic beverage containers, plastic household cleaning and personal care containers, or plastic trash bags each year; or

(B) A single category of a covered product that in aggregate generates less than \$1,000,000 each year in revenue.

(20)(a) "Retail establishment" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.

(b) "Retail establishment" includes, but is not limited to, food service businesses, grocery stores, department stores, hardware stores, home delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.

(21)(a) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers.

(b) "Utensil" does not include plates, bowls, cups, and other products used to contain food or beverages.

NEW SECTION. Sec. 3. POSTCONSUMER RECYCLED CONTENT. (1)(a) Beginning January 1, 2023, producers that offer for sale, sell, or distribute in or into Washington:

(i) Beverages other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers must meet minimum postconsumer recycled content requirements established under subsection (4) of this section; and

(ii) Plastic trash bags must meet minimum postconsumer recycled content requirements established under subsection (6) of this section.

(b) Beginning January 1, 2025, producers that offer for sale, sell, or distribute in or into Washington household cleaning and personal care products in plastic household cleaning and personal care product containers must meet minimum postconsumer recycled content as required under subsection (5) of this section.

(c) Beginning January 1, 2028, producers that offer for sale, sell, or distribute in or into Washington wine in 187 milliliter plastic beverage containers or dairy milk in plastic beverage containers must meet minimum postconsumer recycled content as required under subsection (4) of this section.

(2)(a) On or before April 1, 2022, and annually thereafter, a producer that offers for sale, sells, or distributes in or into Washington covered products must register with the department individually or through a third-party representative registering on behalf of a group of producers.

(b) The registration information submitted to the department under this section must include a list of the producers of covered products and the brand names of the covered products represented in the registration submittal. Beginning April 1, 2024, for plastic trash bags and plastic beverage containers other than wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers, April 1, 2026, for plastic household and personal care product containers, and April 1, 2027, for wine in 187 milliliter plastic beverage containers and dairy milk, a producer may submit registration information at the same time as the information submitted through the annual reporting required under section 4 of this act.

(3)(a) By January 31, 2022, and every January 31st thereafter, the department must:

(i) Identify the annual costs it expects to incur to implement this section and sections 4 through 7 and 12(1), (2), and (4) of this act in the next fiscal year for each category of covered products, including rule making;

(ii) Submit invoices of costs to producers or their third-party representatives; and

(iii) Determine an annual payment by producers or their third-party representative for each category of covered products that is adequate to cover, but not exceed, the department's full costs to implement, administer, and enforce this chapter in the next fiscal year, including rule making, for that category of covered product. In a general order directed to all entities falling within the definition of a producer, the department must equitably determine payment amounts for individual producers or third-party representatives within each category of covered products.

(b) The department must:

(i) Apply any remaining annual payment funds from the current year to the annual payment for the coming year, if the collected annual payment exceeds the department's costs for a given year; and

(ii) Increase annual payments for the coming year to cover the department's costs, if the collected annual payment was less than the department's costs for a given year.

(c) By April 1, 2022, and every April 1st thereafter, producers or their third-party representative must submit a payment as determined by the department under (a) of this subsection.

(4) A producer of a beverage in a plastic beverage container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic beverage containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) For beverages except wine in 187 milliliter plastic beverage containers and dairy milk:

(i) January 1, 2023, through December 31, 2025: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2026, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(b) For wine in 187 milliliter plastic beverage containers and dairy milk:

(i) January 1, 2028, through December 31, 2030: No less than 15 percent postconsumer recycled content plastic by weight;

(ii) January 1, 2031, through December 31, 2035: No less than 25 percent postconsumer recycled content plastic by weight; and

(iii) On and after January 1, 2036: No less than 50 percent postconsumer recycled content plastic by weight.

(5) A producer of household cleaning and personal care products in plastic containers must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2025, through December 31, 2027: No less than 15 percent postconsumer recycled content plastic by weight;

(b) January 1, 2028, through December 31, 2030: No less than 25 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2031: No less than 50 percent postconsumer recycled content plastic by weight.

(6) A producer of plastic trash bags must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic trash bags, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer effective:

(a) January 1, 2023, through December 31, 2024: No less than 10 percent postconsumer recycled content plastic by weight;

(b) January 1, 2025, through December 31, 2026: No less than 15 percent postconsumer recycled content plastic by weight; and

(c) On and after January 1, 2027: No less than 20 percent postconsumer recycled content plastic by weight.

(7)(a) Beginning January 1, 2024, or when rule making is complete, whichever is sooner, the department may, on an annual basis on January 1st, review and determine for the following year whether to adjust the minimum postconsumer recycled content percentage required for a type of container or product or category of covered products pursuant to subsection (4), (5), or (6) of this section. The department's review may be initiated by the department or at the petition of a producer or a covered product manufacturing industry not more than once annually. When submitting a petition, producers or a producer manufacturing industry must provide necessary information that will allow the department to make a determination under (b) of this subsection.

(b) In making a determination pursuant to this subsection, the department must consider, at a minimum, all of the following factors:

(i) Changes in market conditions, including supply and demand for postconsumer recycled content plastics, collection rates, and bale availability both domestically and globally;

(ii) Recycling rates;

(iii) The availability of recycled plastic suitable to meet the minimum postconsumer recycled content requirements pursuant to subsection (4), (5), or (6) of this section, including the availability of high quality recycled plastic, and food-grade recycled plastic from recycling programs;

(iv) The capacity of recycling or processing infrastructure;

(v) The technical feasibility of achieving the minimum postconsumer recycled content requirements in covered products that are regulated under 21 C.F.R., chapter I, subchapter G, 7 U.S.C. Sec. 136, 15 U.S.C. Sec. 1471-1477, 49 C.F.R. Sec. 178.33b, 49 C.F.R. Sec. 173, 40 C.F.R. Sec. 152.10, 15 U.S.C. Sec. 1261-1278, 49 U.S.C. 5101 et seq., 49 C.F.R. Sec. 178.509, 49 C.F.R. Sec. 179.522, 49 C.F.R. Sec. 178.600-609, and other federal laws; and

(vi) The progress made by producers in achieving the goals of this section.

(c) Under (a) of this subsection:

(i) The department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (4), (5), or (6) of this section.

(ii) For plastic household cleaning and personal care product containers, the department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (5) of this section or below a minimum of 10 percent.

(iii) For plastic trash bags, the department may not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled content percentages for the year under review required pursuant to subsection (6) of this section or below the minimum percentage required in subsection (6)(a) of this section.

(d) A producer or the manufacturing industry for a covered product may appeal a decision by the department to adjust postconsumer recycled content percentages under (a) of this subsection to the pollution control hearings board within 30 days of the department's determination.

(8) A producer that does not achieve the postconsumer recycled content requirements established under this section is subject to penalties established in section 5 of this act.

(9)(a) A city, town, county, or municipal corporation may not implement local recycled content requirements for a covered product that is subject to minimum postconsumer recycled content requirements established in this section.

(b) A city, town, county, or municipal corporation may establish local purchasing requirements that include recycled content standards that exceed the minimum recycled content requirements established by this chapter for plastic household cleaning and personal care product containers or plastic trash bags purchased by a city, town, or municipal corporation, or its contractor.

(10) The department may enter into contracts for the services required to implement this chapter and related duties of the department.

(11) In-state distributors, wholesalers, and retailers in possession of covered products manufactured before the date that postconsumer recycled content requirements become effective may exhaust their existing stock through sales to the public.

NEW SECTION. Sec. 4. PRODUCER REPORTING REQUIREMENTS. (1) (a) Except as provided in (b) and (c) of this subsection, beginning April 1, 2024, each producer of covered products, individually or through a third party representing a group of producers, must provide an annual report to the department that includes the amount in pounds of virgin plastic and the amount in pounds of postconsumer recycled content by resin type used for each category of covered products that are sold, offered for sale, or distributed in or into Washington state, including the total postconsumer recycled content resins as a percentage of total weight. The report must be submitted in a format and manner prescribed by the department. A manufacturer may submit national data allocated on a per capita basis for Washington to approximate the information required in this subsection if the producer or third-party representative demonstrates to the department that state level data are not available or feasible to generate.

(b) The requirements of (a) of this subsection apply to household cleaning and personal care products in plastic containers beginning April 1, 2026.

(c) The requirements of (a) of this subsection apply to wine in 187 milliliter plastic beverage containers and dairy milk in plastic beverage containers beginning April 1, 2029.

(d) The department must post the information reported under this subsection on its website, except as provided in subsection (2) of this section.

(2) A producer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director of the department must give

consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

NEW SECTION. Sec. 5. PENALTIES FOR POSTCONSUMER RECYCLED CONTENT REQUIREMENTS. (1) (a) A producer that does not meet the minimum postconsumer recycled content requirements pursuant to section 3 of this act is subject to a penalty pursuant to this section. Beginning June 1st of the year following the first year that minimum postconsumer recycled product content requirements apply to a category of covered product, the penalty must be calculated consistent with subsection (2) of this section unless a penalty reduction or corrective action plan has been approved pursuant to subsection (3) of this section.

(b) A producer that is assessed a penalty pursuant to this section may pay the penalty to the department in one payment, in quarterly installments, or arrange an alternative payment schedule subject to the approval of the department, not to exceed a 12-month payment schedule unless the department determines an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(2) Beginning June 1st of the year following the first year that minimum postconsumer recycled product content requirements apply to a category of covered product, and annually thereafter, the department shall determine the penalty for the previous calendar year based on the postconsumer recycled content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amounts in pounds in the aggregate of virgin plastic, postconsumer recycled content plastic, and any other plastic per category used by the producer to produce covered products sold or offered for sale in or into Washington state, in accordance with the following:

(a) (i) The annual penalty amount assessed to a producer must equal the product of both of the following: The total pounds of plastic used per category multiplied by the relevant minimum postconsumer recycled plastic target

percentage, less the pounds of total plastic multiplied by the percent of postconsumer recycled plastic used; multiplied by 20 cents.

(ii) Example: [(Total pounds of plastic used x minimum postconsumer recycled plastic target percentage) - (Total pounds of plastic used x postconsumer recycled plastic percentage used)] x 20 cents.

(b) For the purposes of (a) of this subsection, both of the following apply:

(i) The total pounds of plastic used must equal the sum of the amount of virgin plastic, postconsumer recycled content plastic, and any other plastic used by the producer, as reported pursuant to section 4 of this act.

(ii) If the product calculated pursuant to (a) of this subsection is equal to or less than zero, the department may not assess a penalty.

(3)(a)(i) The department shall consider granting a reduction of penalties assessed pursuant to this section for the purpose of meeting the minimum postconsumer recycled content requirements required pursuant to section 3 of this act.

(ii) In determining whether to grant the reduction pursuant to (a)(i) of this subsection, the department shall consider, at a minimum, all of the following factors:

- (A) Anomalous market conditions;
- (B) Disruption in, or lack of supply of, recycled plastics; and
- (C) Other factors that have prevented a producer from meeting the requirements.

(b) In lieu of or in addition to assessing a penalty under this section, the department may require a producer to submit a corrective action plan detailing how the producer plans to come into compliance with section 3 of this act.

(4) A producer shall pay the penalty assessed pursuant to this section, as applicable, based on the information reported to the department as required under section 4 of this act in the form and manner prescribed by the department.

(5) A producer may appeal the penalty assessed under this section to the pollution control hearings board within 30 days of assessment.

(6) Penalties collected under this section must be deposited in the recycling enhancement account created in section 13 of this act.

NEW SECTION. **Sec. 6.** PENALTIES FOR REGISTRATION, LABELING, AND REPORTING.

(1) For producers out of compliance with the registration, reporting, or labeling requirements of section 3, 4, or 7 of this act, the department shall provide written notification and offer information to producers. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by certified mail prior to assessing a penalty under subsection (2) of this section.

(2) A producer in violation of the registration, reporting, or labeling requirements in section 3, 4, or 7 of this act is subject to a civil penalty for each day of violation in an amount not to exceed \$1,000.

(3) Penalties collected under this section must be deposited in the recycling enhancement account created in section 13 of this act.

(4) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

NEW SECTION. **Sec. 7.** TRASH BAG LABELING REQUIREMENTS.

(1) Beginning January 1, 2023, producers shall label each package containing plastic trash bags sold, offered for sale, or distributed in or into Washington with:

(a) The name of the producer and the city, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters; or

(b) A uniform resource locator or quick response code to an internet website that contains the information required pursuant to (a) of this subsection.

(2)(a) The provisions of subsection (1) of this section do not apply to a plastic bag that is designed and manufactured to hold, store, or transport dangerous waste or biomedical waste.

(b) For the purposes of this subsection:

(i) "Biomedical waste" means any waste defined as that term under RCW 70A.228.010; and

(ii) "Dangerous waste" means any waste defined as dangerous wastes under RCW 70A.300.010.

NEW SECTION. Sec. 8. A new section is added to chapter 39.26 RCW to read as follows:

POSTCONSUMER RECYCLED CONTENT IN PLASTIC TRASH BAGS—PURCHASING PRIORITY.

(1) Beginning July 1, 2024, all state agencies may only purchase plastic trash bags manufactured by producers that comply with the minimum recycled content requirements established in section 3 of this act.

(2) By July 1, 2024, the department of ecology shall provide to the department a list of the plastic trash bag producer brands that comply with the minimum recycled content requirements established in section 3 of this act, in order for state agencies to purchase compliant products, updated annually.

NEW SECTION. Sec. 9. (1)(a) By July 1, 2021, the departments of commerce and ecology shall jointly select an impartial, third-party facilitator to convene a stakeholder advisory committee housed within the recycling development center. The advisory committee shall make recommendations to the appropriate committees of the legislature on the development of mandatory postconsumer recycled content requirements for types of plastic packaging not subject to the minimum postconsumer recycled content requirements established in this act, and that are present in the municipal solid waste material stream or are regularly received by facilities that process recyclable materials from residential curbside recycling programs. The recommendations may include rates of mandatory postconsumer recycled content required by material type, target implementation dates, and potential exemptions or alternate compliance pathways for some materials.

(b) The facilitator must:

(i) Work with the recycling development center to subcontract for any relevant information regarding recycled plastic market conditions and barriers to the use of recycled content to provide to the stakeholder advisory committee to aid

in the development of recommendations, to the extent practicable;

(ii) Provide staff and support to the stakeholder advisory committee meetings; and

(iii) Draft reports and other materials for review by the stakeholder advisory committee.

(2) The facilitator identified in subsection (1) of this section must be selected based on the following criteria:

(a) Impartiality regarding policy outcomes;

(b) Professional qualifications, relevant experience, and degrees; and

(c) The facilitator must be an environmental conflict resolution specialist recognized by a national center for environmental conflict resolution.

(3) By December 1, 2021, the facilitator shall submit a report to the legislature containing the recommendations of the stakeholder advisory committee after review and approval by the facilitator and committee. The stakeholder advisory committee shall make recommendations using consensus-based decision making. The report must include recommendations where general stakeholder consensus has been achieved and note dissenting opinions where stakeholder consensus has not been achieved.

(4) The stakeholder advisory committee shall consider information and findings by a variety of authoritative bodies related to recycled content, including mechanical and advanced recycling technologies.

(5) The facilitator shall select at least one member to the stakeholder advisory committee from each of the following:

(a) The department of commerce;

(b) The department of ecology;

(c) The utilities and transportation commission;

(d) Cities, including both small and large cities and cities located in urban and rural counties;

(e) Counties, including both small and large counties and urban and rural counties;

- (f) Municipal collectors;
- (g) A representative from the private sector waste and recycling industry that owns or operates a curbside recycling program and a material recovery facility;
- (h) A solid waste collection company regulated under chapter 81.77 RCW that provides curbside recycling services;
- (i) A material recovery facility operator that processes municipal solid waste from curbside recycling programs;
- (j) A company that provides curbside recycling service pursuant to a municipal contract under RCW 81.77.020;
- (k) A trade association that represents the private sector solid waste industry;
- (l) Recycled plastic feedstock users;
- (m) A trade association representing the plastics recycling industry;
- (n) A recycled content certification organization;
- (o) An environmental justice organization;
- (p) An environmental nonprofit organization;
- (q) An environmental nonprofit organization that specializes in waste and recycling issues;
- (r) Plastic converters/manufacturers of resins;
- (s) A manufacturer of plastic packaging;
- (t) A statewide general business trade association;
- (u) Associations that represent consumer brand companies;
- (v) Representatives of consumer brands;
- (w) A consumer-oriented organization;
- (x) Representatives of the state's most marginalized communities;
- (y) A retailer or representative of the retail association;
- (z) A representative of an advanced recycling technology provider that processes plastic material;
- (aa) An association that represents cities;

(bb) An association that represents county solid waste managers;

(cc) A representative from a retail grocery association; and

(dd) A representative from a Washington headquartered online retailer.

(6) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

(7) This section expires January 1, 2022.

NEW SECTION. **Sec. 10.** EXPANDED POLYSTYRENE PROHIBITIONS. (1) (a) Beginning June 1, 2024, the sale and distribution of the following expanded polystyrene products in or into Washington state is prohibited:

(i) A portable container that is designed or intended to be used for cold storage, except for expanded polystyrene containers used for drugs, medical devices, and biological materials as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable commodities from a wholesale or retail establishment; and

(ii) Food service products that include food containers, plates, clam shell-style containers, and hot and cold beverage cups. For the purposes of this subsection (1)(a)(ii), food service products do not include: Packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood, vegetables, fruit, or egg cartons.

(b) Beginning June 1, 2023, the sale and distribution of void filling packaging products, which means loose fill packaging material, also referred to as packing peanuts, in or into Washington state is prohibited.

(2) (a) The department must provide technical assistance and guidance to manufacturers of prohibited expanded polystyrene products, upon request. For manufacturers out of compliance with the requirements of this section, the department shall provide written notification and offer information to manufacturers that sell prohibited expanded polystyrene products who are in violation of this section. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by

certified mail prior to assessing a penalty.

(b) A manufacturer of products in violation of this section is subject to a civil penalty for each violation in an amount not to exceed:

(i) \$250 if it is the manufacturer's first penalty; and

(ii) \$1,000 if the manufacturer has previously been issued a civil penalty under this section.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(3) A city, town, county, or municipal corporation may not implement a local ordinance restricting products prohibited under subsection (1) of this section unless the ordinance was filed by April 1, 2021, and enacted by June 1, 2021. An ordinance restricting products prohibited under subsection (1) of this section that was not enacted as of June 1, 2021, is preempted by this section.

(4) For the purposes of this section, "manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that:

(a) Produces the products subject to restrictions in subsection (1) of this section; or

(b) Is an importer or domestic distributor of a product subject to restrictions in subsection (1) of this section sold or offered for sale in or into the state.

NEW SECTION. **Sec. 11.** OPTIONAL SERVICEWARE. (1) Beginning January 1, 2022:

(a) Except as provided in (b) of this subsection, a food service business may provide the following single use food service products only after affirming that the customer wants the item or items:

(i) Utensils;

(ii) Straws;

(iii) Condiment packaging; and

(iv) Beverage cup lids.

(b) A food service business may provide beverage cup lids without customer affirmation for:

(i) Hot beverages;

(ii) Beverages provided through delivery service or curbside pickup; and

(iii) Beverages served to customers via a drive through or at large, permanent, venues that are designed for professional sport or music events and that have a fixed-seat capacity of at least 2,500 customers and are enclosed or are surrounded by a perimeter fence.

(c) The requirements of this section do not apply to food service products provided to a patient, resident, or customer in:

(i) A health care facility or a health care provider as defined in RCW 70.02.010;

(ii) Long-term care facilities identified in RCW 18.51.010, 18.20.020, 70.128.010, 70.97.010, or 18.390.010;

(iii) Senior nutrition programs authorized under 45 C.F.R. Sec. 1321, and home delivered meals offered under chapters 74.39 and 74.39A RCW;

(iv) Services to individuals with developmental disabilities under Title 71A RCW and chapter 74.39A RCW; and

(v) State hospitals as defined in RCW 72.23.010.

(d) The requirements of this subsection (1) apply to the activities of the department of corrections and the department of children, youth, and families only to the extent operationally feasible and practicable.

(2)(a) Nothing in this section prohibits a food service business from making utensils, straws, condiments, and beverage cup lids available to customers using cylinders, bins, dispensers, containers, or other means of allowing for single-use utensils, straws, condiments, and beverage cup lids to be obtained at the affirmative volition of the customer.

(b) Utensils provided by a food service business for use by customers may not be bundled or packaged in plastic in such a way that a customer is unable to take only the type of single-use utensil

or utensils desired without also taking a different type or types of utensil.

(3)(a) The department may issue a civil penalty of no less than \$150 per day and no more than \$2,000 per day to the owner or operator of a food service business for each day single-use food service products are provided in violation of this section.

(b) The department must issue at least two notices of violation by certified mail prior to assessing a penalty.

(c) Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(d) A food service business may appeal penalties assessed under this subsection to the pollution control hearings board within 30 days of assessment.

(4) All food service businesses are encouraged, but not required, to take actions in addition to the requirements of this section that support a goal of reducing the use of and waste generated by single-use food service products.

(5) Beginning July 1, 2021, a city, town, county, or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring affirmation that a customer wants single-use food service products from the customer of the food service business or other retail establishment.

NEW SECTION. Sec. 12. DEPARTMENT DUTIES. (1) The department may conduct audits and investigations for the purpose of ensuring compliance with sections 3 and 5 of this act based on the information reported under section 4 of this act.

(2) The department shall annually publish a list of registered producers of covered products and associated brand names, their compliance status, and other information the department deems appropriate on the department's website.

(3) To assist regulated parties with the requirements specified under sections 10 and 11 of this act, the department:

(a) Must prepare and post on its website information regarding the prohibitions on the sale and distribution of expanded polystyrene products as specified under section 10 of this act

and optional serviceware under section 11 of this act;

(b) For education and outreach to help implement sections 10 and 11 of this act, may develop culturally appropriate and translated educational materials and resources for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states.

(4) The department may adopt rules as necessary to administer, implement, and enforce this chapter.

NEW SECTION. Sec. 13. RECYCLING ENHANCEMENT ACCOUNT. The recycling enhancement account is created in the custody of the state treasurer. All penalties collected by the department pursuant to sections 5 and 6 of this act must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for providing grants to local governments for the purpose of supporting local solid waste and financial assistance programs.

NEW SECTION. Sec. 14. RECYCLED CONTENT ACCOUNT. The recycled content account is created in the custody of the state treasurer. All receipts received by the department under section 3 of this act must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for implementing, administering, and enforcing the requirements of sections 3 through 7 and 12(1), (2), and (4) of this act.

NEW SECTION. Sec. 15. MARKET STUDY. (1) Subject to the availability of amounts appropriated for this specific purpose prior to January 1, 2028, the department shall contract with a research university or an independent third-party consultant to study the plastic resin markets for all of the following:

(a) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum

postconsumer recycled content requirements for covered products pursuant to sections 3 and 4 of this act; and

(b) Determining the data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry.

(2) If funding is provided pursuant to subsection (1) of this section and the department undertakes the study, the study must be completed by May 1, 2029.

Sec. 16. RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, sections 5, 6, 10, and 11 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, section 3 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions of the department of ecology that are appealable under section 3 of this act to set recycled minimum postconsumer content for covered products.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 17. RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, sections 5, 6, 10, and 11 of this act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of

information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW

70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

Sec. 18. RCW 70A.220.020 and 2020 c 20 s 1228 are each amended to read as follows:

~~((1) The provisions of this section and any rules adopted under this section shall be interpreted to conform with nationwide plastics industry standards.~~

~~(2)) Except as provided in RCW 70A.220.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. ((The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number.)) The numbers and letters used shall be as follows:~~

- (a) 1.= PETE (polyethylene terephthalate)
- (b) 2.= HDPE (high density polyethylene)
- (c) 3.= V (vinyl) or PVC (polyvinyl chloride)
- (d) 4.= LDPE (low density polyethylene)
- (e) 5.= PP (polypropylene)
- (f) 6.= PS (polystyrene)
- (g) 7.= OTHER

NEW SECTION. Sec. 19. Sections 2 through 7 and 9 through 15 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other

persons or circumstances is not affected."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Hoff; Jacobsen; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5032

Prime Sponsor, Senator Hasegawa: Concerning the reauthorization and improvements to alternative public works contracting procedures. Reported by Committee on Capital Budget

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 39.10.210 and 2019 c 212 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) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Budget contingencies" means contingencies established by a public body outside of the design-build or general contractor/construction manager contract for payment of project costs that are not the responsibility of the design-builder or general contractor/construction manager under the respective contract.

(4) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

~~((4))~~ (5) "Coefficient" means the job order contractor's competitively bid numerical factor applied to the public body's prices as published in the unit price book.

(6) "Committee," unless otherwise noted, means the project review committee.

~~((5))~~ (7) "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.

~~((6))~~ (8) "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.

~~((7))~~ (9) "General contractor/construction manager" means a firm with which a public body has selected to provide services during the design phase and negotiated a maximum allowable construction cost to act as construction manager and general contractor during the construction phase.

~~((8))~~ (10) "Heavy civil construction project" means a civil engineering project, the predominant features of which are infrastructure improvements.

~~((9))~~ (11) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of ~~((negotiated, definitive))~~ work orders for public works as defined in RCW 39.04.010.

~~((10))~~ (12) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

~~((11))~~ (13) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.

~~((12))~~ (14) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal, and that are negotiated as part of the maximum allowable construction cost.

~~((13))~~ (15) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.

~~((14))~~ (16) "Price-related factor" means an evaluation factor that impacts costs which may include, but is not limited to overhead and profit, lump sum or guaranteed maximum price for the entire or a portion of the project, operating costs, or other similar factors that may apply to the project.

~~((15))~~ (17) "Public body" means any general or special purpose government in the state of Washington, including but not limited to state agencies, institutions of higher education, counties, cities, towns, ports, school districts, and special purpose districts.

~~((16))~~ (18) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.

~~((17))~~ (19) "Risk contingency" means a contingency for use as defined in the contract and established as part of the maximum allowable construction cost for unexpected cost of work items that have not otherwise been included or addressed in the maximum allowable construction cost.

(20) "Small business entity" means a small business as defined in RCW 39.26.010.

~~((18))~~ (21) "Total contract cost" means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, and the percent fee on the negotiated maximum allowable construction cost.

~~((19))~~ (22) "Total project cost" means the cost of the project less financing and land acquisition costs.

~~((20))~~ (23) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. ~~((The prices may include: All the costs of materials, labor, equipment, overhead, including bonding costs, and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.))~~

~~(21))~~ (24) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract.

Sec. 2. RCW 39.10.220 and 2013 c 222 s 2 are each amended to read as follows:

(1) The board is created in the department of enterprise services to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.

(2) Members of the board identified in (a) through (f) of this subsection must be knowledgeable or have experience in public works procurement and contracting, including state and federal laws, rules, and best practices concerning public contracting for minority, women, and veteran-owned businesses and small businesses, and are appointed as follows:

(a) Two representatives from construction general contracting; one representative from the architectural profession; one representative from the engineering profession; two representatives from construction specialty subcontracting; two representatives from construction trades labor organizations; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of enterprise services; one individual representing Washington cities; two representatives from private industry; one individual from the private sector representing the interests of the disadvantaged business enterprises community; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state, each appointed by the governor. ~~((All appointed members must be knowledgeable about public works contracting procedures.))~~ The board must reflect the gender, racial, ethnic, and geographic diversity of the state, including the interests of persons with disabilities. If a vacancy occurs, the governor shall fill the vacancy for the unexpired term;

(b) One member representing counties, selected by the Washington state association of counties;

(c) One member representing public ports, selected by the Washington public ports association;

(d) One member representing public hospital districts, selected by the association of Washington public hospital districts;

(e) One member representing school districts, selected by the Washington state school directors' association; ~~((and))~~

(f) One member representing transit, selected by the Washington state transit association; and

(g) Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

(4) The board chair is selected from among the appointed members by the majority vote of the voting members.

(5) Legislative members of the board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the board, project review committee members, and committee chairs shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) Vacancies are filled in the same manner as appointed. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The board shall meet as often as necessary.

(8) Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

(9) The department of enterprise services shall provide staff support as may be required for the proper discharge of the function of the board.

(10) The board may establish committees as it desires and may invite nonmembers of the board to serve as committee members.

(11) ~~((The board shall encourage participation from persons and entities not represented on the board))~~ The board shall provide opportunities for persons and entities not represented on the board to participate and provide insights on matters of interest to the board, particularly with respect to the experiences of minority, women, and veteran-owned businesses and small businesses.

Sec. 3. RCW 39.10.230 and 2013 c 222 s 3 are each amended to read as follows:

The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to encourage competition and to further enhance the quality, efficiency, and accountability of and equitable participation by disadvantaged business enterprises in capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding best practices, expansion, continuation, elimination, or modification of the alternative public works contracting methods, including specific recommendations for reducing barriers for and increasing participation by disadvantaged business enterprises;

(2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;

(4) Appoint members of committees; and

(5) ~~((Develop and administer questionnaires designed to provide))~~ Collect quantitative and qualitative data on alternative public works contracting procedures ((on which evaluations are based.

~~The capital projects advisory review board is directed to review current statutes regarding life-cycle cost analysis and energy efficiency as related to the design-build procurement method~~

~~performed under chapter 39.10 RCW. Capital projects advisory review board shall report to the appropriate committees of the legislature by December 31, 2013, with recommendations for statutory changes that promote energy efficiency and reduce the total cost to construct, operate and maintain public buildings. Recommendation must include provisions for postoccupancy validation of estimated energy efficiency measures, and operating and maintenance cost estimates. Life-cycle estimates of energy use must include estimates of energy consumptions for materials used in construction))~~ to support the board's work in meeting the purpose established in RCW 39.10.220(1).

Sec. 4. RCW 39.10.240 and 2013 c 222 s 4 are each amended to read as follows:

(1) The board shall establish a project review committee to review and approve public works projects using the design-build and general contractor/construction manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.

(2) The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures. Appointees must represent a balance ~~((among the industries and public owners on the board))~~ of public and private sector representatives of the board listed in RCW 39.10.220, and must include at least one member representing the interests of disadvantaged business enterprises.

(a) Each member of the committee shall be appointed for a term of three years. However, for initial appointments, the board shall stagger the appointment of committee members so that the first members are appointed to serve terms of one, two, or three years from the date of appointment. Appointees may be reappointed to serve more than one term.

(b) The committee shall, by a majority vote, elect a chair and vice chair for the committee.

(c) The committee chair may select a person or persons on a temporary basis as a nonvoting member if project specific expertise is needed to assist in a review.

(3) The chair of the committee, in consultation with the vice chair, may appoint one or more panels of at least six committee members to carry out the duties of the committee. Each panel shall have balanced representation of the private and public sector representatives serving on the committee, and shall include a member representing the interests of disadvantaged business enterprises.

(4) Any member of the committee directly or indirectly affiliated with a submittal before the committee must recuse himself or herself from the committee consideration of that submittal.

(5) Any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.

(6) The committee shall meet as often as necessary to ensure that certification and approvals are completed in a timely manner.

Sec. 5. RCW 39.10.250 and 2019 c 212 s 2 are each amended to read as follows:

The committee shall:

(1) Certify, or renew certification for, public bodies to use design-build or general contractor/construction manager contracting procedures, or both;

(2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270;

(3) Review and approve the use of alternative subcontractor selection under RCW 39.10.385 on a project-by-project basis for public bodies that are not certified under RCW 39.10.270, which review and approval may be concurrent with project approval; and

(4) Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years.

Sec. 6. RCW 39.10.300 and 2019 c 212 s 4 are each amended to read as follows:

(1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure, including progressive

design-build, for public works projects in which the total project cost is over ~~((two million dollars))~~ \$2,000,000 and where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure, including progressive design-build, for parking garages and preengineered metal buildings, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, ~~((preengineered metal buildings,))~~ or not more than ~~((ten))~~ 10 prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years.

(6) Washington State University may perform design-build demonstration projects with a total project cost under \$2,000,000 to develop best practices in encouraging participation of small business entities and of minority, women, and veteran-owned businesses, and in

managing capital projects under \$2,000,000. Washington State University shall provide reports to the board every other year, starting with two years after the effective date of this section. Such reports shall include information on the type of projects performed, the initial and final project cost and schedule of the projects, participation of small business entities and of minority, women, and veteran-owned businesses, and the best practices derived from the projects. The report shall include outreach measures developed in concert with the office of minority and women's business enterprises.

Sec. 7. RCW 39.10.330 and 2019 c 212 s 6 are each amended to read as follows:

(1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. ~~((The))~~ At a minimum, 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 qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The public body is encouraged to post the design-build opportunity in additional areas, such as websites for business associations or the office of minority and women's business enterprises, to further publicize the opportunity for qualified design-build teams. The request for qualifications documents shall include:

(a) A description of the project including the estimated design-build contract value and the intended use of the project;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for qualifications shall include technical

qualifications, such as specialized experience and technical competence of the firms and the key design and construction personnel; capacity to perform; the proposer's past performance in utilization of ~~((the office of minority and women's business enterprises certified businesses))~~ disadvantaged business enterprises, to the extent permitted by law; ability to provide a performance and payment bond for the project; and other appropriate factors. Evaluation factors ~~((may))~~ must also include, but are not limited to, the proposer's past performance in utilization of small business entities and the inclusion plan for small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include the management plan to meet time and budget requirements and one or more price-related factors. Evaluation factors may also include, but not be limited to, the technical approach ~~((, design concept, and the outreach plan to include small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project))~~ or the design concept;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The proposed contract;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body

shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists. The request for proposal documents shall include:

(a) Any specific forms to be used by the finalists; and

(b) Submission of a summary of the finalist's accident prevention program and an overview of its implementation.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the request for qualifications, the request for proposals, and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the finalist submitting the highest scored proposal. If the public body is unable to execute a contract with the finalist submitting the highest scored proposal, negotiations with that finalist may be suspended or terminated and the public body may proceed to negotiate with the next highest scored finalist. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(6) The public body shall notify all finalists of the selection decision and

make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) Any contract must require the firm awarded the contract to track and report to the public body and to the office of minority and women's business enterprises its utilization of the office of minority and women's business enterprises certified businesses and veteran certified businesses.

(9) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall recognize the level of effort required to meet the selection criteria.

Sec. 8. RCW 39.10.350 and 2014 c 42 s 4 are each amended to read as follows:

(1) A public body using the general contractor/construction manager contracting procedure shall provide for:

(a) The preparation of appropriate, complete, and coordinated design documents;

(b) Confirmation that a constructability analysis of the design documents has been performed prior to solicitation of a subcontract bid package;

(c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;

(e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects,

critical path method schedule review and analysis, and the administration, pricing, and negotiation of change orders;

(f) Contract documents that include alternative dispute resolution procedures to be attempted before the initiation of litigation;

(g) Contract documents that: (i) Obligate the public owner to, in writing, accept, dispute, or reject a request for equitable adjustment, change order request, or claim within a specified time period but no later than ((sixty)) 30 calendar days after the receipt by the public body of related documentation; ((and)) (ii) provide that, if the request is disputed or rejected, the public owner shall state in writing why part or all of the request is disputed or rejected; and (iii) provide that if the public owner does not respond in writing to a request for equitable adjustment, change order request, or claim within the specified time period, the ((request is deemed denied)) contractor shall not be deemed to have waived any right to the claims process;

(h) Submission of project information, as required by the board; and

(i) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, or other performance goals if such incentives are identified in the request for proposals. No incentives granted may exceed five percent of the maximum allowable construction cost. No incentives may be paid from any contingency fund established for coordination of the construction documents or coordination of the work.

(3) If the construction is completed for less than the maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the construction is completed for more than the maximum allowable construction cost, the additional cost is the responsibility of the general contractor/construction manager.

(4) If the public body and the general contractor/construction manager agree, in writing, on a price for additional work, the public body must issue a change order within ~~((thirty))~~ 30 days of the written agreement. If the public body does not issue a change order within the ~~((thirty))~~ 30 days, interest shall accrue on the dollar amount of the additional work satisfactorily completed until a change order is issued. The public body shall pay this interest at a rate of one percent per month.

~~((5) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract.))~~

Sec. 9. RCW 39.10.360 and 2014 c 42 s 5 are each amended to read as follows:

(1) 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))~~ at a time in the project when the general contractor/construction manager's participation provides value.

(2) 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. At a minimum, 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 performed, a notice of its request for qualifications from proposers for general contractor/construction manager services, and the availability and location of the request for proposal documents. The public body is encouraged to post the general contractor/construction manager opportunity in additional areas, such as websites for business associations or the office of minority and women's business enterprises, to further publicize the opportunity for qualified general contractors/construction managers. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and

technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure ~~((including, if applicable, a clear statement that the public body is electing to procure the project as a heavy civil construction project, in which case the solicitation must additionally:~~

~~((i) Indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated self-perform portion of the project;~~

~~((ii) Indicate whether the public body will allow the price to be paid for the negotiated self-perform portion of the project to be deemed a cost of the work to which the general contractor/construction manager's percent fee applies; and~~

~~((iii) Require proposals to indicate the proposer's fee for the negotiated self-perform portion of the project));~~

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors, the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3) ~~((a))~~ Evaluation factors for ~~((selection))~~ qualifications of the general contractor/construction manager shall include, but not be limited to:

~~((i) Ability of the firm's professional))~~ (a) Experience and technical competence of key personnel;

~~((ii))~~ (b) The ((firm's)) proposer's past performance ((is)) with negotiated ((and)) or similarly complex projects;

~~((iii))~~ (c) The ((firm's ability to meet time and budget requirements)) proposer's capacity to perform the work;

~~((iv))~~ (d) The scope of work the firm proposes to self-perform and its ((ability to perform)) past performance of that scope of work;

~~((v) The firm's proximity to the project location;~~

~~((vi) Recent, current, and projected workloads of the firm; and~~

~~((vii))~~ (e) The ((firm's)) proposer's approach to executing the project, including ability to meet the project time and budget requirements; and

(f) The proposer's past performance in utilization of disadvantaged business enterprises and small business entities and the inclusion plan for small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project.

~~((b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.))~~

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, ~~((including))~~ which must include sealed bids for the percent fee on the estimated maximum allowable construction cost and ~~((the fixed amount for the general conditions work specified))~~ which may include other price-related factors identified in the request for proposal. In no event shall a price-related factor include a request for overall project budget, estimate, or bid. The public body shall establish a time and place for the opening of sealed bids ~~((for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal)).~~ At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. 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. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(6) Public bodies may contract with the selected firm 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.

Sec. 10. RCW 39.10.370 and 2014 c 42 s 6 are each amended to read as follows:

(1) The maximum allowable construction cost shall be used to establish a total contract cost for which the general contractor/construction manager shall provide a performance and payment bond. The maximum allowable construction cost shall be negotiated between the public body and the selected firm when the construction documents and specifications are at least ninety percent complete.

(2) Major bid packages may be bid in accordance with RCW 39.10.380 before agreement on the maximum allowable construction cost between the public body and the selected general contractor/construction manager. The general contractor/construction manager may issue an intent to award to the responsible bidder submitting the lowest responsive bid.

(3) The public body may, at its option, authorize the general contractor/construction manager to proceed with the bidding and award of bid packages and construction before receipt

of complete project plans and specifications. Any contracts awarded under this subsection shall be incorporated in the negotiated maximum allowable construction cost.

(4) The total contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the negotiated support services, and the percent fee on the negotiated maximum allowable construction cost. ~~((Negotiated support services may be included in the specified general conditions at the discretion of the public body.))~~ Unless portions or all are converted to lump sum, negotiated support services shall be treated as a contractual allowance, subject to reconciliation at the conclusion of work.

(5) 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.

(6) If the maximum allowable construction cost varies more than ~~((fifteen))~~ 15 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.

~~((7) As part of the negotiation of the maximum allowable construction cost under subsection (1) of this section, on a project that the public body has elected to procure as a heavy civil construction project:~~

~~(a) The general contractor/construction manager shall submit a proposed construction management and contracting plan, which must include, at a minimum:~~

~~(i) The scope of work and cost estimates for each bid package;~~

~~(ii) A proposed price and scope of work for the negotiated self perform portion of the project;~~

~~(iii) The bases used by the general contractor/construction manager to develop all cost estimates, including the~~

~~negotiated self perform portion of the project; and~~

~~(iv) The general contractor/construction manager's updated outreach plan to include small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;~~

~~(b) The public body and general contractor/construction manager may negotiate the scopes of work to be procured by bid and the price and scope of work for the negotiated self perform portion of the project, if any;~~

~~(c) The negotiated self perform portion of the project must not exceed fifty percent of the cost of the work to construct the project;~~

~~(d) Subject to the limitation of RCW 39.10.390(4), the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;~~

~~(e) The public body and general contractor/construction manager shall negotiate, to the public body's satisfaction, a fair and reasonable outreach plan;~~

~~(f) If the public body is unable to negotiate to its reasonable satisfaction a component of this subsection (7), negotiations with the firm must be 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.)~~

Sec. 11. RCW 39.10.380 and 2013 c 222 s 14 are each amended to read as follows:

(1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings and require the public solicitation of the bid documents. At a minimum, the general contractor/construction manager 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 subcontract work will be performed, a notice of its request for bid, and the availability and location of the bid

documents. The general contractor/construction manager is encouraged to post the subcontract opportunity in additional areas beyond the legal newspaper as required by this subsection, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the opportunity for qualified subcontractors. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest responsive bid. In preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement. Individual bid packages are to be prepared with trades separated in the manner consistent with industry practice to maximize participation and competition across all trades. Bundling of trades not normally combined into one bid package is not allowed without justification and specific approval by the public body. Bid packages must be prepared to reduce barriers for and increase participation by disadvantaged business enterprises.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

(3) All subcontractors who bid work over ~~((three hundred thousand dollars))~~ \$300,000 shall post a bid bond. All subcontractors who are awarded a contract over ~~((three hundred thousand dollars))~~

\$300,000 shall provide a performance and payment bond for the contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager.

(4) If the general contractor/construction manager receives a written protest from a subcontractor bidder or an equipment or material supplier, the general contractor/construction manager shall not execute a contract for the subcontract bid package or equipment or material purchase order with anyone other than the protesting bidder without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice of its protest no later than two full business days following the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

(5) 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.

(6) The general contractor/construction manager may negotiate with the lowest responsible and responsive bidder to negotiate an adjustment to the lowest bid or proposal price to reduce cost based upon agreed changes to the contract plans and specifications under the following conditions:

(a) All responsive bids or proposal prices exceed the ~~((available funds))~~ published bid package estimates; and

(b) The apparent low responsive bid or proposal does not exceed the ~~((available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and~~

~~(c) The negotiated adjustment will bring the bid or proposal price within the amount of available funds))~~ published bid package estimates by more than 10 percent.

(7) If the negotiation is unsuccessful, the subcontract work or equipment or material purchases must be rebid.

(8) The general contractor/construction manager must provide a written explanation to the public body if all bids are rejected.

Sec. 12. RCW 39.10.385 and 2013 c 222 s 15 are each amended to read as follows:

The selection process in this section may be used by public bodies certified under RCW 39.10.270. It may also be used by noncertified public bodies if this selection process has been approved for the project by the project review committee. As an alternative to the subcontractor selection process outlined in RCW 39.10.380, a general contractor/construction manager may, with the approval of the public body, select ~~((mechanical subcontractors, electrical))~~ one or more subcontractors ~~((or both))~~ using the process outlined in this section. This alternative selection process may only be used when the anticipated value of the subcontract will exceed three million dollars. When using the alternative selection process, the general contractor/construction manager should select the subcontractor early in the life of the public works project.

(1) In order to use this alternative selection process, the general contractor/construction manager and the public body must determine that it is in the best interest of the public. In making this determination the general contractor/construction manager and the public body must:

(a) Publish a notice of intent to use this alternative selection process in ~~((a))~~ the same legal newspaper where the public solicitation of proposals is published ~~((in or as near as possible to that part of the county where the public work will be constructed)).~~ The general contractor/construction manager and public body are encouraged to post the notice in additional areas beyond the legal newspaper as required under this subsection, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the intent to use this alternative selection process. Notice must be published at least fourteen calendar days before conducting a public hearing. The notice must include the date, time, and location of the hearing; a statement justifying the basis and need for the alternative selection process; how interested parties may, prior to the

hearing, obtain the following: (i) The evaluation criteria and applicable weight given to each criteria that will be used for evaluation, including clear definitions of what should be considered specified general conditions work and what should be considered the fee; and (ii) protest procedures including time limits for filing a protest, which may, in no event, limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision. The evaluation criteria, weights assigned to each criteria, and justification for using this selection process must be made available upon request at least seven calendar days before the public hearing;

(b) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for using this selection process, the evaluation criteria, weights for each criteria, and protest procedures;

(c) After the public hearing, consider the written and verbal comments received and determine if using this alternative selection process is in the best interests of the public; and

(d) Issue a written final determination to all interested parties. ~~((All protests of the decision to use the alternative selection process must be in writing and submitted to the public body within seven calendar days of the final determination.))~~ The final determination shall state the reasons the alternative selection process is determined to be in the best interests of the public and shall reasonably address the comments received regarding the criteria and weights for each criterion. Any modifications to the criteria, weights, and protest procedures based on comments received during the public hearing process must be included in the final determination. All protests of the decision to use the alternative selection process must be in writing and submitted to the public body within seven calendar days of the final determination. The public body shall not proceed with the selection process until after responding in writing to the protest.

(2) Contracts for the services of a subcontractor under this section must be awarded through a competitive process requiring a public solicitation of proposals. Notice of the public solicitation of proposals must be

provided to the office of minority and women's business enterprises. The public solicitation of proposals must include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available, along with a description of the project's unique aspects, complexities, and challenges;

(b) The reasons for using the alternative selection process;

(c) A description of the minimum qualifications required of the firm;

(d) A description of the process used to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) Protest procedures;

(f) The form of the contract, including any contract for preconstruction services, to be awarded;

(g) The estimated maximum allowable subcontract cost; and

(h) The bid instructions to be used by the finalists.

(3) Evaluation factors for selection of the subcontractor must include, but not be limited to:

(a) Ability of the firm's professional personnel to deliver projects similar in size, scope, or complexity;

(b) The firm's past performance on ~~((similar))~~ projects similar in size, scope, or complexity;

(c) The firm's ability to meet time and budget requirements on projects similar in size, scope, or complexity;

(d) The scope of work the firm proposes to perform with its own forces and its ability to perform that work;

(e) The firm's plan for ~~((outreach to minority and women owned businesses))~~ inclusion of disadvantaged business enterprises, to the extent permitted by law;

(f) The firm's proximity to the project location;

(g) ~~((The firm's capacity to successfully complete the project;~~

~~(h))~~ The firm's approach to executing the project based on its delivery of

other projects similar in size, scope, or complexity;

~~((i))~~ (h) The firm's approach to safety on the project;

~~((j))~~ (i) The firm's safety history;

(j) If interviews are part of the selection process, the solicitation shall describe how interviews will be scored or evaluated, and evaluations shall be included in the written selection summary; and

(k) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

(4) The general contractor/construction manager shall establish a committee to evaluate the proposals. At least one representative from the public body shall serve on the committee. Final proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work specified in the request for proposal, will be requested from the most qualified firms.

(5) The general contractor/construction manager must notify all proposers of the most qualified firms that will move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer, the general contractor/construction manager must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the most qualified finalists must file the protest with the public body in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision issued by the public body is transmitted to the protestor.

(6) The general contractor/construction manager and the public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors identified in the solicitation of proposals. Scoring of the nonprice factors shall be added to the scoring of the fee and cost proposals

to determine the highest scored firm. The scoring of the nonprice factors must be made available at the public opening of the fee and cost proposals. The general contractor/construction manager shall notify all proposers of the selection decision and make a selection summary of the final proposals, which shall be available to all proposers within two business days of such notification. The general contractor/construction manager may not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(7) If the public body receives a timely written protest from a "most qualified firm," the general contractor/construction manager may not execute a contract for the protested subcontract work until two business days after the final protest decision issued by the public body is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(8) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected deemed by public body and the general contractor/construction manager to be fair, reasonable, and within the available funds, negotiations with that firm must be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or the process is terminated.

(9) With the approval of the public body, the general contractor/construction manager may contract with the selected firm to provide preconstruction 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 ~~((mechanical or electrical))~~ subcontractor during the construction phase.

(10) The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the

percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified for the subcontract, including the estimated cost of work to be performed by the subcontractor's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost must be negotiated between the general contractor/construction manager and the selected firm when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

(11) If the work of the (~~mechanical contractor or electrical contractor~~) subcontractor is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an incentive clause becomes part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the work of the (~~mechanical contractor or the electrical contractor~~) subcontractor is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of that subcontractor. An independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs (~~as outlined in the contract~~). The public body or general contractor/construction manager shall define the scope of the audit in the contract.

(12) A (~~mechanical or electrical contractor~~) subcontractor selected under this section may perform work with its own forces. In the event it elects to subcontract some of its work, it must select a subcontractor utilizing the procedure outlined in RCW 39.10.380.

Sec. 13. RCW 39.10.390 and 2014 c 42 s 7 are each amended to read as follows:

(1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

(2) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work

or for the supply of equipment or materials if:

(a) The work within the subcontract bid package or equipment or materials is customarily performed or supplied by the general contractor/construction manager;

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; 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 or for the equipment or materials.

(3) In no event may the general contractor/construction manager or its subsidiaries assign warranty responsibility or the terms of its contract or purchase order with vendors for equipment or material purchases to subcontract bid package bidders or subcontractors who have been awarded a contract. The value of subcontract work performed and equipment and materials supplied by the general contractor/construction manager may not exceed (~~thirty~~) 30 percent of the negotiated maximum allowable construction cost, unless procured as a heavy civil construction project under this chapter. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection.

~~((4) Notwithstanding any contrary provision of this chapter, for a project that a public body has elected to procure as a heavy civil construction project under this chapter, at least thirty percent of the cost of the work to construct the project included in the negotiated maximum allowable construction cost must be procured through competitive sealed bidding in which bidding by the general contractor/construction manager or its subsidiaries is prohibited.))~~

Sec. 14. RCW 39.10.400 and 2013 c 222 s 17 are each amended to read as follows:

(1) If determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the general contractor/construction manager and the public body may determine subcontractor eligibility to bid. The general

contractor/construction manager and the public body must:

(a) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for conducting bidder eligibility, the evaluation criteria, and weights for each criteria and subcriteria;

(b) Publish a notice of intent to evaluate and determine bidder eligibility in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed at least ~~((fourteen))~~ 14 calendar days before conducting a public hearing. The general contractor/construction manager and public body are encouraged to post the notice in additional areas beyond the legal newspaper as required under this subsection, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the intent to use subcontractor eligibility prior to seeking bids;

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for performing eligibility analysis before bid opening, and how interested parties may, at least five days before the hearing, obtain the specific eligibility criteria and applicable weights given to each criteria and subcriteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if establishing bidder eligibility in advance of seeking bids is in the best interests of the project and critical to the successful completion of a subcontract bid package; and

(e) Issue a written final determination to all interested parties. All protests of the decision to establish bidder eligibility before issuing a subcontractor bid package must be filed with the superior court within seven calendar days of the final determination. Any modifications to the eligibility criteria and weights shall be based on comments received during the public hearing process and shall be included in the final determination.

(2) Determinations of bidder eligibility shall be in accordance with the evaluation criteria and weights for

each criteria established in the final determination and shall be provided to interested persons upon request. Any potential bidder determined not to meet eligibility criteria must be afforded one opportunity to establish its eligibility. Protests concerning bidder eligibility determinations shall be in accordance with subsection (1) of this section.

Sec. 15. RCW 39.10.430 and 2019 c 212 s 8 are each amended to read as follows:

(1) Job order contracts shall be awarded through a competitive process using public requests for proposals.

(2) The public body shall ~~((make an effort))~~ prioritize efforts to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the Washington state civil rights act, RCW 49.60.400.

(3) The public body shall publish, at least once in a statewide publication and legal newspaper of general circulation published in every county in which the public works project is anticipated, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body is encouraged to post the request for proposals for job order contracts and the availability and location of the request for proposal documents in other areas, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the opportunities. The public body shall ensure that the request for proposal documents at a minimum includes:

(a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;

(b) The reasons for using job order contracts;

(c) A description of the qualifications required of the proposer;

(d) The identity of the specific unit price book to be used and a description of which elements shall be included in the coefficient as necessary to establish

a firm fixed price on work orders to be awarded under the job order contract;

(e) The minimum contracted amount committed to the selected job order contractor;

(f) 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 public body shall ensure that evaluation factors include, but are not limited to, ~~((proposal price))~~ the coefficient and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; past performance on approved subcontractor inclusion plans; ability to provide a performance and payment bond for the job order contract; recent, current, and projected workloads of the proposer; location; and the concept of the proposal;

(g) The form of the contract to be awarded;

(h) The method for pricing renewals or extensions to the job order contract;

(i) A notice that the proposals are subject to RCW 39.10.470; and

(j) Other relevant information ~~((relevant to the project))~~.

(4) A public body shall establish a committee, including a member with knowledge and experience in state and federal laws, rules, and best practices concerning public contracting for minority, women, and veteran-owned businesses and small businesses, to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit ~~((final proposals, including sealed bids based upon the identified unit price book))~~ a sealed bid including, but not limited to, coefficient(s). Such bids may be in the form of coefficient ~~((markups from))~~ adjustments to the listed unit price book ((costs)). The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals and

will notify the board of the award of the contract.

(5) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest.

(6) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts.

Sec. 16. RCW 39.10.440 and 2019 c 212 s 9 are each amended to read as follows:

(1) The maximum total dollar amount that may be awarded under a job order contract is ~~((four million dollars))~~ \$4,000,000 per year for a maximum of three years. Any unused capacity from the previous year may be carried over for one year and added to the immediate following year's limit. The maximum annual volume including unused capacity shall not exceed the limit of two years. The maximum total dollar amount that may be awarded under a job order contract for the department of enterprise services, counties with a population of more than ~~((one million))~~ 1,000,000, and cities with a population of more than ~~((four hundred thousand))~~ 400,000 is ~~((six million dollars))~~ \$6,000,000 per year for a maximum of three years. The maximum total dollar amounts are exclusive of Washington state sales and use tax.

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(3) A public body may have no more than three job order contracts in effect at any one time, with the exception of the department of enterprise services, which may have six job order contracts in effect at any one time.

(4) At least (~~ninety~~) 90 percent of work contained in a job order contract must be subcontracted to entities other than the job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including certified minority and woman-owned subcontractors to the extent permitted by law as demonstrated on the subcontractor and supplier project submission, and shall limit subcontractor bonding requirements to the greatest extent possible.

(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated. The job order contractor is encouraged to post the notification of intent to perform public works projects in other areas, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize subcontractor opportunities.

(6) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, (~~2021~~) 2031; however the job order contract may be extended or renewed as provided for in this section.

~~((9) Public bodies may amend job order contracts awarded prior to July 1, 2007, in accordance with this chapter.)~~

Sec. 17. RCW 39.10.460 and 2012 c 102 s 3 are each amended to read as follows:

Each (~~year, a~~) public body shall (~~provide to the board~~) maintain and make available the following information for each job order contract (~~for the period July 1st through June 30th~~):

- (1) A list of work orders issued;
- (2) The cost of each work order;

(3) A list of subcontractors hired under each work order, including whether those subcontractors were certified small, minority, women, or veteran-owned businesses; and

(4) (~~If requested by the board, a~~) A copy of the intent to pay prevailing wage and the affidavit of wages paid for each work order subcontract (~~and~~

~~(5) Any other information requested by the board).~~

Sec. 18. RCW 39.10.490 and 2013 c 222 s 20 are each amended to read as follows:

The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, (~~2021~~) 2031. Methods of public works contracting authorized under this chapter shall remain in full force and effect until completion of contracts signed before July 1, (~~2021~~) 2031.

NEW SECTION. Sec. 19. A new section is added to chapter 39.10 RCW to read as follows:

In addition to the general contractor/construction manager requirements established in this chapter, public bodies utilizing the general contractor/construction manager method for a heavy civil construction project must also comply with the following requirements:

(1) The heavy civil construction general contractor/construction manager contract solicitation must:

(a) Provide the reasons for using the general contractor/construction manager procedure, including a clear statement that the public body is electing to procure the project as a heavy civil construction project;

(b) Indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated self-perform portion of the project;

(c) Indicate whether the public body will allow the price to be paid for the negotiated self-perform portion of the project to be deemed a cost of the work to which the general contractor/construction manager's percent fee applies; and

(d) Require proposals to indicate the proposer's fee for the negotiated self-perform portion of the project;

(2) As part of the negotiation of the maximum allowable construction cost established in RCW 39.10.370(1), the general contractor/construction manager shall submit a proposed construction management and contracting plan, which must include, at a minimum:

(a) The scope of work and cost estimates for each bid package;

(b) A proposed price and scope of work for the negotiated self-perform portion of the project;

(c) The bases used by the general contractor/construction manager to develop all cost estimates, including the negotiated self-perform portion of the project; and

(d) The general contractor/construction manager's updated inclusion plan for small business entities, disadvantaged business enterprises, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;

(3) The public body and general contractor/construction manager may negotiate the scopes of work to be procured by bid and the price and scope of work for the negotiated self-perform portion of the project, if any;

(4) The negotiated self-perform portion of the project must not exceed 50 percent of the cost of the work to construct the project;

(5) Notwithstanding any contrary provision of this chapter, for a project that a public body has elected to procure as a heavy civil construction project under this chapter, at least 30 percent

of the cost of the work to construct the project included in the negotiated maximum allowable construction cost must be procured through competitive sealed bidding in which bidding by the general contractor/construction manager or its subsidiaries is prohibited;

(6) Subject to the limitation of subsection (5) of this section, the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;

(7) The public body and general contractor/construction manager shall negotiate, to the public body's satisfaction, a fair and reasonable inclusion plan;

(8) If the public body is unable to negotiate to its reasonable satisfaction a component of this section, negotiations with the firm must be 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; and

(9) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract. The public body shall define the scope of the audit in the contract.

NEW SECTION. Sec. 20. (1) The capital projects advisory review board shall coordinate and consult with the office of minority and women's business enterprises, the department of enterprise services, the office of equity, community stakeholders and advocates, and subject matter experts to create best practices guidelines for increasing and sustaining access to contracting opportunities in alternative public works for minority, women, and veteran-owned businesses, and small businesses. In creating the guidelines, the board shall take into consideration the barriers to participation identified in the local government contracting report produced pursuant to section 16, chapter 434, Laws of 2019, information and recommendations from the 2019 Washington state disparity study and disparity studies of any other public body in Washington state, and successful diversity and inclusion policies being implemented by state and local

governmental agencies. The best practices shall address, at a minimum, guidelines for use of race-neutral and race-conscious programs, elements of successful inclusion plans, the use of aspirational inclusion goals, evaluation of inclusion plans in the contract award process, and the evaluation of inclusion plans and past performance in public body certification and project approval processes under RCW 39.10.270 and 39.10.280. The board shall make the best practices guidelines available on its website by June 30, 2022, and should have a plan to update the practices to keep them relevant for use. Additionally, by June 30, 2022, the board shall report to the appropriate committees of the legislature regarding any recommendations for changes to state law that are advisable based upon the best practices guidelines.

(2) This section expires July 1, 2023.

Sec. 21. RCW 43.131.407 and 2013 c 222 s 21 are each amended to read as follows:

The alternative public works contracting procedures under chapter 39.10 RCW shall be terminated June 30, (~~2021~~) 2031, as provided in RCW 43.131.408.

Sec. 22. RCW 43.131.408 and 2019 c 212 s 13 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~2022~~) 2032:

(1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2021 c ... s 1 (section 1 of this act), 2019 c 212 s 1, 2014 c 42 s 1, & 2013 c 222 s 1;

(3) RCW 39.10.220 and 2021 c ... s 2 (section 2 of this act), 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

(4) RCW 39.10.230 and 2021 c ... s 3 (section 3 of this act), 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2021 c ... s 4 (section 4 of this act), 2013 c 222 s 4, & 2007 c 494 s 104;

(6) RCW 39.10.250 and 2021 c ... s 5 (section 5 of this act), 2019 c 212 s 2, 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

(8) RCW 39.10.270 and 2019 c 212 s 3, 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2021 c ... s 6 (section 6 of this act), 2019 c 212 s 4, 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

(12) RCW 39.10.320 and 2019 c 212 s 5, 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c 132 s 7;

(13) RCW 39.10.330 and 2021 c ... s 7 (section 7 of this act), 2019 c 212 s 6, 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 204;

(14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c 494 s 301;

(15) RCW 39.10.350 and 2021 c ... s 8 (section 8 of this act), 2014 c 42 s 4, & 2007 c 494 s 302;

(16) RCW 39.10.360 and 2021 c ... s 9 (section 9 of this act), 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;

(17) RCW 39.10.370 and 2021 c ... s 10 (section 10 of this act), 2014 c 42 s 6, & 2007 c 494 s 304;

(18) RCW 39.10.380 and 2021 c ... s 11 (section 11 of this act), 2013 c 222 s 14, & 2007 c 494 s 305;

(19) RCW 39.10.385 and 2021 c ... s 12 (section 12 of this act), 2013 c 222 s 15, & 2010 c 163 s 1;

(20) RCW 39.10.390 and 2021 c ... s 13 (section 13 of this act), 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c 494 s 306;

(21) RCW 39.10.400 and 2021 c ... s 14 (section 14 of this act), 2013 c 222 s 17, & 2007 c 494 s 307;

(22) RCW 39.10.410 and 2007 c 494 s 308;

(23) RCW 39.10.420 and 2019 c 212 s 7, 2017 c 136 s 1, & 2016 c 52 s 1;

(24) RCW 39.10.430 and 2021 c ... s 15 (section 15 of this act), 2019 c 212 s 8, & 2007 c 494 s 402;

(25) RCW 39.10.440 and 2021 c ... s 16 (section 16 of this act), 2019 c 212 s 9, 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;

(26) RCW 39.10.450 and 2019 c 212 s 10, 2012 c 102 s 2, & 2007 c 494 s 404;

(27) RCW 39.10.460 and 2021 c ... s 17 (section 17 of this act), 2012 c 102 s 3, & 2007 c 494 s 405;

(28) RCW 39.10.470 and 2019 c 212 s 11, 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c 132 s 10;

(29) RCW 39.10.480 and 1994 c 132 s 9;

(30) RCW 39.10.490 and 2021 c ... s 18 (section 18 of this act), 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;

(31) RCW 39.10.900 and 1994 c 132 s 13;

(32) RCW 39.10.901 and 1994 c 132 s 14;

(33) RCW 39.10.903 and 2007 c 494 s 510;

(34) RCW 39.10.904 and 2007 c 494 s 512; (~~and~~)

(35) RCW 39.10.905 and 2007 c 494 s 513; and

(36) RCW 39.10.--- and 2021 c ... s 19 (section 19 of this act).

NEW SECTION. Sec. 23. 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."

Correct the title.

Signed by Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman; Dye; Eslick; Gilday; Kloba; Kraft; Leavitt; MacEwen; Maycumber; Mosbrucker; Peterson; Riccelli; Rule; Santos; Sells and Shewmake.

Referred to Committee on Rules for second reading.

March 31, 2021

SSB 5034 Prime Sponsor, Committee on Law & Justice: Concerning nonprofit corporations. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Civil Rights & Judiciary.

Strike everything after the enacting clause and insert the following:

"PART I

FORMATION AND GENERAL CONDITIONS

ARTICLE 1

GENERAL PROVISIONS

NEW SECTION. Sec. 1101. SHORT TITLE. This chapter may be known and cited as the Washington nonprofit corporation act.

NEW SECTION. Sec. 1102. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Address," unless otherwise specified, means either a physical mailing address or an electronic address.

(2) "Articles" or "articles of incorporation" means the original articles of incorporation as modified by all amendments thereof, as filed by the secretary of state. If any record filed under this chapter restates the articles in their entirety, thenceforth the articles shall not include any prior filings.

(3) "Board" or "board of directors" means the team or body of individuals ultimately responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the team or body.

(4) "Bylaws" means the code or codes of rules, other than the articles, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules, excluding separate policies or procedures adopted by the board.

(5) "Charitable corporation" means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.

(6) "Charitable purpose" means a purpose that:

(a) Would make a corporation organized and operated exclusively for that purpose eligible to be exempt from taxation under section 501(c)(3) of the Internal Revenue Code; or

(b) Is considered charitable under applicable law other than this chapter or the Internal Revenue Code.

(7) "Contribution" means the payment, donation, or promise, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation.

(8) "Corporation" means a domestic nonprofit corporation, unless otherwise specified.

(9) "Delegate" means a person elected or appointed to vote in a representative capacity for the election of directors or on other matters.

(10) "Deliver" or "delivery" of a record means delivery by hand, United States mail, private courier service, electronic transmission, or other methods of delivery used in conventional commercial practice, except that delivery to the secretary of state means actual receipt by the secretary of state.

(11) "Director" means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position.

(12) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(13) "Domestic corporation" or "domestic nonprofit corporation" means a domestic corporation incorporated under or subject to this chapter.

(14) "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this state.

(15) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(16) "Electronic transmission" means an electronic communication:

(a) Not directly involving the physical transfer of a record in a tangible medium; and

(b) That may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(17) "Electronically transmitted" means that the sender of an electronic transmission initiated the electronic transmission.

(18) "Eligible entity" means a domestic or foreign unincorporated entity, a domestic nonprofit corporation incorporated under a corporations statute other than this chapter or its predecessor statutes, or a domestic or foreign for-profit corporation.

(19) "Employee" does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

(20) "Entitled to vote" means entitled to vote on the matter under consideration pursuant to the articles or bylaws of the nonprofit corporation or any applicable controlling provision of law.

(21) "Entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and includes, but is not limited to:

(a) A domestic or foreign for-profit corporation;

(b) A domestic or foreign nonprofit corporation;

(c) A domestic or foreign general or limited partnership;

(d) A domestic or foreign limited liability partnership;

(e) A domestic or foreign limited liability company;

(f) Any other domestic or foreign unincorporated entity;

(g) A domestic or foreign estate or trust;

(h) The federal government;

(i) A tribal government; and

(j) A state or local government, foreign government, or governmental subdivision.

(22) "Ex officio director" means an individual who becomes a member of the board of directors not through the regular elections process but by virtue of another position that he or she holds. Unless the articles or bylaws specifically state that an ex officio director does not have the right to vote,

such a director has the same right to vote as any other director.

(23) "Execute" or "executed" means:

(a) Signed, with respect to a written record;

(b) Electronically transmitted along with sufficient information to determine the sender's identity and intent to execute; or

(c) With respect to a record to be filed by the secretary of state, in compliance with the standards for filing as prescribed by this chapter; chapter 23.95 RCW; or the secretary of state.

(24) "Federal government" includes a district, authority, bureau, commission, department, and any other agency of the federal government of the United States.

(25) "Filing entity" means an unincorporated entity that is created by filing a public organic record.

(26) "For-profit corporation" or "domestic for-profit corporation" means a domestic business corporation incorporated under or subject to Title 23B RCW or any successor provisions.

(27) "Foreign," with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(28) "Foreign for-profit corporation" means a foreign corporation that would be a for-profit corporation if incorporated under the law of this state.

(29) "Foreign corporation" or "foreign nonprofit corporation" means a foreign corporation that would be a nonprofit corporation if incorporated under the law of this state.

(30) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(31) "Fundamental transaction" means an amendment of the articles or bylaws, merger, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.

(32) "Gift instrument" means a record or records under which property is donated to, transferred to, granted to, or held by the corporation. A solicitation constitutes a gift

instrument with respect to a donation, transfer, or grant of property made in response to the solicitation only if:

(a) The solicitation was in the form of a record, including but not limited to, invitations made by electronic transmission or in electronic media, or was documented in the form of a record created no later than ninety days after the solicitation was made; and

(b) The donation, transfer, or grant of property was made within one year of the solicitation.

(33) "Governmental subdivision" includes an authority, county, district, and municipality formed or authorized by any federal, state, or local government.

(34) "Includes" denotes a partial definition.

(35) "Individual" means a natural person.

(36) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(a) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.

(37) "Interest holder" means a person who holds of record an interest.

(38) "Interest holder liability" means personal liability for a debt, obligation, or liability of a domestic or foreign for-profit or nonprofit corporation or unincorporated entity that is imposed on a person:

(a) Solely by reason of the person's status as a shareholder, interest holder, or member; or

(b) By the articles, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.

(39) "Internal Revenue Code" means Title 26 U.S.C., the federal Internal

Revenue Code of 1986, as amended, or any successor statute.

(40) "Jurisdiction," when used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(41) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(42) "Material interest" means an actual or potential benefit or detriment, other than one that would devolve on the nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual's judgment when participating in the action to be taken.

(43) "Material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual's judgment when participating in the action to be taken.

(44) "Means" denotes an exhaustive definition.

(45) "Member" means:

(a) Where the articles state that the corporation has members, a person who has a right set forth in the articles or bylaws, not as a delegate, to select or vote for the election of directors or delegates or to vote on at least one type of fundamental transaction.

(b) For a corporation formed before January 1, 2022, the articles of which do not state that the corporation has members, a person who:

(i) Is defined as a member in the bylaws; and

(ii) Has a right provided in the bylaws, not as a delegate, to select or vote for the election of directors or delegates or to vote on at least one type of fundamental transaction.

(c) A delegate or group of delegates, to the extent:

(i) The powers, functions, or authority of the members have been vested in, or are exercised by, such a delegate or group of delegates; and

(ii) The provision of this chapter in which the term appears is relevant to the discharge by the delegate or group of

delegates of its powers, functions, or authority.

(46) "Membership" means the rights and any obligations of a member in a nonprofit corporation.

(47) "Membership corporation" means a nonprofit corporation whose articles provide that it has members, or that has members as defined in subsection (45) of this section.

(48) "Nonfiling entity" means an unincorporated entity that is not created by filing a public organic record.

(49) "Nonmembership corporation" means a nonprofit corporation whose articles do not provide that it has members and that does not have members as defined in subsection (45)(b) of this section.

(50) "Nonprofit corporation" means a domestic nonprofit corporation, unless otherwise specified.

(51) "Notice" has the same meaning as described in section 1103 of this act.

(52) "Notify" means to provide notice as defined in section 1103 of this act.

(53) "Officer" includes:

(a) A person who is an officer as defined in section 2601 of this act; and

(b) If a nonprofit corporation is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this chapter.

(54) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(55) "Organic record" means a public organic record or the private organic rules.

(56) "Person" includes an individual or an entity.

(57) "Principal office" means the office designated in the annual report required under RCW 23.95.255 as the location of the principal executive office of a domestic or foreign nonprofit corporation, whether or not in this state.

(58) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an

unincorporated entity, are binding on all of its interest holders, and are not part of its public organic record, if any.

(59) "Proceeding" means any civil suit or criminal, administrative, or investigatory action.

(60) "Property" means all property, whether real, personal, or mixed or tangible or intangible, including cash, securities, or real property, or any right or interest therein.

(61) "Property held for charitable purposes" is as defined in section 1408 of this act.

(62) "Public organic record" means the record, if any, that is filed as a public record to create an unincorporated entity and any amendment to or restatement of that record.

(63) "Record" means information inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. An electronic transmission not directly involving the physical transfer of a record in a tangible medium is a record only if:

(a) It may be retained, retrieved, and reviewed by the sender and the recipient thereof; and

(b) It may be directly reproduced in a tangible medium by the sender and the recipient thereof.

(64) "Record date" means the date established under section 2307 of this act on which a nonprofit corporation determines the identity of its members and the membership rights they hold for purposes of this chapter. The determinations shall be made as of 12:01 a.m. on the record date unless another time for doing so is specified when the record date is fixed.

(65) "Registered foreign nonprofit corporation" means a foreign nonprofit corporation registered to do business in this state.

(66) "Religious corporation" means a charitable corporation including, but not limited to, a church, mosque, synagogue, temple, nondenominational ministry, interdenominational or ecumenical organization, or faith-based social service agency, that is:

(a) Organized primarily for religious purposes;

(b) Operated primarily, in good faith, to carry out religious purposes;

(c) Held out to the public as carrying out religious purposes; and

(d) Not engaged primarily or substantially in the exchange of goods or services for consideration, unless the consideration does not exceed nominal amounts.

(67) "Shareholder" means the person in whose name shares are registered in the records of a domestic or foreign for-profit corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with such a corporation.

(68) "Shares" means the units into which the proprietary interests in a domestic or foreign for-profit corporation, or a nonprofit corporation incorporated under organic law other than this chapter that permits proprietary interests in such a corporation, are divided.

(69) "Solicitation" means any oral or written request for a contribution, including an offer or attempt by the solicitor to sell any property, rights, services, or other thing, in connection with which:

(a) Any appeal is made for any charitable purpose;

(b) The name of any charitable corporation, or any foreign nonprofit corporation that would be a charitable corporation if it were incorporated under this chapter, is used as an inducement for making the contribution or consummating the sale; or

(c) Any statement is made that implies that the whole or any part of the contribution or the proceeds from the sale will be applied toward any charitable purpose or donated to any entity organized or operated for charitable purposes.

(70) "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, and any agency or governmental subdivision of any of the foregoing.

(71) "Tangible medium" means a writing, copy of a writing, facsimile, or

a physical reproduction, each on paper or on other tangible material.

(72) "Unincorporated entity" means an entity that is not any of the following: A domestic or foreign for-profit or nonprofit corporation, an estate, a trust, a governmental subdivision, the federal government, a tribal government, a state or local government, a municipal corporation, a foreign government, or a governmental subdivision. The term includes a general partnership, limited liability company, limited partnership, cooperative association, limited cooperative association, business or statutory trust, joint stock association, and unincorporated nonprofit association.

(73) "Vote," "voting," or "casting a vote" includes voting occurring at a meeting; voting of members by ballot or proxy; and the giving of consent in the form of a record without a meeting by a person entitled to vote. Whether or not the person entitled to vote characterizes such conduct as voting or casting a vote, the term does not include either recording the fact of abstention or failing to vote for:

(a) A candidate; or

(b) Approval or disapproval of a matter.

(74) "Voting group" means one or more classes of members that under the articles, bylaws, or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles, bylaws, or this chapter to vote generally on that matter are for that purpose a single voting group.

(75) "Voting power" means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

NEW SECTION. Sec. 1103. NOTICE. (1) Notice under this chapter must be in the form of a record unless this chapter or the articles or bylaws allow oral notice.

(2) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(3) Notice, other than notice described in subsection (4) of this section, is effective at the earliest of the following:

(a) When received;

(b) When left at the recipient's residence or usual place of business;

(c) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(4) Notice in the form of a record by a membership corporation to a member is effective:

(a) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member's address shown in the corporation's current record of members;

(b) When given, if the notice is delivered by electronic transmission to the member's address shown in the corporation's current record of members; or

(c) When given, if the notice is delivered in any other manner that the member has authorized.

(5) Notice to a domestic or registered foreign nonprofit corporation may be delivered to its registered agent or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its registration statement.

(6) Where oral notice is permitted, it is effective when communicated, if communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

(8) With respect to electronic transmissions:

(a) Unless otherwise provided in the articles or bylaws, or otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(i) It enters an electronic system that the recipient has designated or currently uses for the purpose of receiving electronic transmissions of the type sent; and

(ii) It is in a form capable of being processed by that system.

(b) An electronic transmission is received under (a)(i) of this subsection even if no individual is aware of its receipt.

(c) Receipt of an electronic acknowledgment from an electronic system described in (a)(i) of this subsection establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received, and is not necessary for the record to be received.

(9) A member may revoke in the form of a record a corporation's express or implied authorization to deliver notices or communications by electronic transmission to the member. Such authorization is deemed revoked with respect to a member if:

(a) The corporation cannot deliver two consecutive notices or other communications to the member's address shown in the corporation's current record of members; and

(b) The inability becomes known to the secretary or other person responsible for giving the notice or other communication; but the failure to treat the inability as a revocation does not invalidate any meeting or other action.

NEW SECTION. Sec. 1104. SERVICE ON CORPORATIONS. (1) Service upon a nonprofit corporation of any process, notice, or demand required or permitted by law may be made by serving the nonprofit corporation's registered agent.

(2) Service upon a nonprofit corporation made by serving the nonprofit corporation's registered agent, or service on the nonprofit corporation in the absence of a registered agent, is governed by chapter 23.95 RCW.

NEW SECTION. Sec. 1105. VENUE FOR ACTIONS. Except as provided under federal or state law or in specific provisions of this chapter, every action arising under this chapter shall be tried in, and "the court" throughout this chapter refers to, the superior court:

(1) In the county where the corporation's principal office in this state is located;

(2) If the corporation has no principal office in this state, in the county where the corporation's registered agent in this state is located;

(3) Of King county; or

(4) Of Thurston county.

NEW SECTION. Sec. 1106. APPLICATION TO EXISTING NONPROFIT CORPORATIONS. (1) This chapter applies to every domestic nonprofit corporation in existence on January 1, 2022, that was incorporated under chapter 24.03 RCW or filed a statement of election through which it elected to have chapter 24.03 RCW apply to it.

(2) Any corporation or association organized under any other chapter of Title 24 RCW may be reorganized under this chapter by adopting and filing amendments to its articles in accordance with this chapter. The articles as amended shall conform to this chapter, and shall state that the corporation accepts the benefits of and will be bound by this chapter.

NEW SECTION. Sec. 1107. APPLICATION TO REGISTERED FOREIGN CORPORATIONS. A foreign nonprofit corporation registered as of December 31, 2021, is subject to this chapter but is not required to obtain a new statement of registration to transact business in this state.

NEW SECTION. Sec. 1108. RELATIONSHIP TO PRIOR STATUTES. (1) Except as provided in subsection (2) of this section, the repeal of chapter 24.03 RCW by this act does not affect:

(a) The operation of the repealed chapter or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the repealed chapter before its repeal;

(c) Any violation of the repealed chapter, or any penalty, forfeiture, or

punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the repealed chapter before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the repealed chapter as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of chapter 24.03 RCW repealed by this act is reduced by this chapter, then the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

NEW SECTION. **Sec. 1109.** RELATIONSHIP TO OTHER LAWS. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(3) This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act, Title 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize delivery by electronic transmission of any of the notices described in section 103(b) of that act.

NEW SECTION. **Sec. 1110.** SUBORDINATION TO CANON LAW. To the extent religious doctrine or canon law governing the internal affairs of a nonprofit corporation is inconsistent with this chapter, the religious doctrine or canon law controls to the extent required by the United States Constitution, the state Constitution, or both.

ARTICLE 2

FILING DOCUMENTS—SECRETARY OF STATE

NEW SECTION. **Sec. 1201.** APPLICABILITY OF UNIFORM BUSINESS ORGANIZATIONS CODE. Filing of documents under this chapter by the secretary of state is governed by this chapter and chapter 23.95 RCW.

NEW SECTION. **Sec. 1202.** FILING REQUIREMENTS. (1) To be entitled to filing by the secretary of state, a

record delivered for filing under this chapter must:

(a) Satisfy the requirements set forth in RCW 23.95.200;

(b) Contain all information required under this chapter and chapter 23.95 RCW;

(c) Be executed on behalf of the domestic or foreign entity as follows:

(i) If the entity is a domestic or foreign nonprofit corporation, by an officer;

(ii) If the entity is not a domestic or foreign nonprofit corporation, by a person with authority to sign for the entity; or

(iii) If the entity is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, by that fiduciary; and

(d) Satisfy the requirements of any other provision of this chapter or chapter 23.95 RCW that adds to or varies any of the requirements in this section.

(2) A filed record may include additional information not in conflict with the requirements of subsection (1) of this section.

(3)(a) Whenever a provision of this chapter permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following provisions apply:

(i) The plan or filed record shall set forth the manner in which the facts will operate upon the terms of the plan or filed record.

(ii) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(B) A determination or action by any person or body, including the nonprofit corporation or any other party to a plan or filed record; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.

(d) As used in this subsection:

(i) "Filed record" means a record filed by the secretary of state under any provision of the Uniform Business Organizations Code or any provision of this chapter except sections 1801 through 1811 of this act, except an annual report filed pursuant to section 1204 of this act; and

(ii) "Plan" means a plan of domestication, business conversion, entity conversion, distribution, or merger.

NEW SECTION. Sec. 1203. ELECTRONIC FILINGS. Any rules governing electronic filing adopted by the secretary of state under RCW 23.95.115(2) apply to all filings required or permitted under this chapter unless such rules, this chapter, or chapter 23.95 RCW specify otherwise.

NEW SECTION. Sec. 1204. ANNUAL REPORT. Each domestic nonprofit corporation, and each registered foreign nonprofit corporation, shall deliver to the secretary of state for filing an annual report as required under RCW 23.95.255(2).

NEW SECTION. Sec. 1205. MAJOR CHANGES BY CHARITABLE CORPORATIONS. (1) A charitable corporation shall report any action described in subsection (2) of this section on the next annual report that the charitable corporation delivers to the secretary of state for filing under section 1204 of this act, except as provided in subsection (3) of this section.

(2) The actions that create a reporting requirement under this section are:

(a) Amendment of the charitable corporation's articles to include one or more purposes of the corporation substantially different from any purpose stated in the charitable corporation's articles in effect before the amendment; or

(b) Operation of a significant program or activity that is substantially different from both:

(i) Programs or activities the charitable corporation has previously operated; and

(ii) Programs or activities described in the most recent application for recognition of exemption from federal income tax that the charitable

corporation has filed with the internal revenue service and in response to which the internal revenue service has issued a determination letter of tax-exempt status to the charitable corporation.

(3) A charitable corporation is not required to report actions described in subsection (2) of this section:

(a) If the charitable corporation was a religious corporation both before and after it took the action;

(b) Within the charitable corporation's first three years of existence, if all programs or activities the charitable corporation operates are consistent with the purposes set forth in the charitable corporation's articles; or

(c) When the charitable corporation operates a program or activity described in subsection (2)(b) of this section, if all funds expended to conduct such a program or activity are derived only from one or more of the following sources:

(i) Contributions or sales in response to one or more solicitations in which:

(A) The program or activity was clearly described; and

(B) A statement was made that implies that the corporation will apply any contribution, or proceeds from any sale, in connection with those solicitations toward the program or activity;

(ii) Admissions, performance of services, or furnishing of facilities;

(iii) Sales of goods not in connection with any solicitation;

(iv) Income from investments of the charitable corporation that is not subject to any gift restriction; or

(v) Revenue from any source that is recognized after the program or activity has been in continuous operation and disclosed to the general public for a period of at least three years.

(4) The secretary of state shall deliver to the attorney general a copy of every annual report filed by the secretary of state that includes a report described in this section.

NEW SECTION. Sec. 1206. POWERS OF SECRETARY OF STATE. The secretary of state has the powers reasonably necessary to perform the duties required by this chapter, including adoption, amendment,

or repeal of rules under chapter 34.05 RCW for the efficient administration of this chapter.

NEW SECTION. **Sec. 1207.** FEES. The secretary of state may adopt rules in accordance with chapter 34.05 RCW setting fees for any services provided by the secretary of state under this chapter.

ARTICLE 3

INCORPORATION

NEW SECTION. **Sec. 1301.** INCORPORATORS. One or more individuals may act as the incorporators of a nonprofit corporation by delivering articles of incorporation to the secretary of state for filing. Individuals acting as incorporators must be at least eighteen years old.

NEW SECTION. **Sec. 1302.** CORPORATE NAME. The name or any reserved name of a nonprofit corporation is governed by chapter 23.95 RCW.

NEW SECTION. **Sec. 1303.** ARTICLES OF INCORPORATION. (1) The articles of incorporation shall set forth:

(a) A name for the nonprofit corporation that satisfies the requirements of section 1302 of this act;

(b) The name and address of the corporation's initial registered agent;

(c) That the corporation is incorporated under this chapter;

(d) The purpose or purposes for which the corporation is organized;

(e) The number of directors constituting the initial board of directors, and the names and mailing addresses of the persons who are to serve as the initial directors;

(f) If the corporation will have members as defined in section 1102 of this act, a statement that the corporation will have members;

(g) The distribution of assets upon dissolution;

(h) The name and mailing address of each incorporator; and

(i) The signature of each incorporator.

(2) The articles of incorporation may set forth:

(a) A statement that the corporation has no members as defined in this chapter

(whether or not the corporation uses the term "member" to define one or more classes of persons who are not members as defined in this chapter);

(b) The names of the initial members, if any;

(c) Provisions not inconsistent with law regarding:

(i) Managing the business and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and the members, if any;

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) A provision permitting or making obligatory indemnification of any individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding, subject to the limitations set forth in section 2706 of this act;

(e) Provisions required if the corporation is to be exempt from taxation under federal, state, or local law; or

(f) Any other provision that this chapter specifically permits to be set forth in the articles or bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(4) Provisions of the articles may be made dependent upon facts objectively ascertainable outside the articles in accordance with section 1202(3) of this act.

NEW SECTION. **Sec. 1304.** EFFECTIVENESS OF INCORPORATION. (1) Unless a delayed effective date is specified, the corporate existence begins on the date the articles are filed by the secretary of state.

(2) The filing of the articles by the secretary of state is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by this state to cancel or revoke the incorporation or involuntarily dissolve the nonprofit corporation.

NEW SECTION. **Sec. 1305.** REQUIREMENT OF REGISTERED AGENT. (1) Each nonprofit corporation shall designate and maintain a registered agent in this state.

(2) The designation and maintenance of a nonprofit corporation's registered agent are governed by chapter 23.95 RCW.

NEW SECTION. **Sec. 1306.** LIABILITY FOR PREINCORPORATION TRANSACTIONS. All persons purporting to act as or on behalf of a nonprofit corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

NEW SECTION. **Sec. 1307.** ORGANIZATION OF CORPORATIONS. (1) After incorporation:

(a) The initial directors shall hold an organizational meeting at the call of a majority of the initial directors to complete the organization of the nonprofit corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; and

(b) If the initial directors resign or refuse to meet, then the incorporator or incorporators shall hold a meeting at the call of a majority of the incorporators to elect a board of directors who shall complete the organization of the corporation.

(2) An organizational meeting may be held in or out of this state.

(3) The directors or incorporators may take organizational action without a meeting if the action taken is evidenced by one or more consents in the form of a record describing the action taken and executed by each director or incorporator.

NEW SECTION. **Sec. 1308.** BYLAWS. (1) The board shall adopt initial bylaws for the corporation.

(2) The bylaws may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles. Whenever a provision of the bylaws is inconsistent with a provision of the articles, the provision of the articles controls.

ARTICLE 4

PURPOSES, POWERS, AND LIMITATIONS

NEW SECTION. **Sec. 1401.** PURPOSES. (1) Nonprofit corporations may be

organized under this chapter for the purpose of engaging in any lawful activity. A nonprofit corporation may set forth a more limited purpose or purposes in its articles.

(2) A charitable corporation formed on or after January 1, 2022, must be organized under this chapter, unless incorporating under this chapter is prohibited by another statute of this state.

(3) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporating under this chapter is not prohibited by the other statute. The corporation is subject to all the limitations of the other statute. Organizations subject to any provision of the banking or insurance laws of this state may not be organized under this chapter, except that any nonprofit corporation heretofore organized under any act hereby repealed and existing for the purpose of providing health care services as defined in RCW 48.44.010 or 48.46.020, as now or hereafter amended, continues to be organized under this chapter.

NEW SECTION. **Sec. 1402.** POWER TO MODIFY PURPOSES. (1) Unless otherwise prohibited by its articles or bylaws, a nonprofit corporation, including a charitable corporation, may modify its purposes by:

(a) Amending its articles or bylaws in accordance with this chapter and with those documents; and

(b) Making provision for any gift restrictions as defined in section 1502 of this act, either by ensuring continued adherence to those restrictions or by obtaining modification as provided in section 1503 of this act.

(2) A decision to modify the corporation's purposes is subject to judicial review only with respect to violations of this chapter or other applicable law.

NEW SECTION. **Sec. 1403.** GENERAL POWERS. Unless its articles provide otherwise, every nonprofit corporation has perpetual duration and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power to:

(1) Sue and be sued, complain and defend in its corporate name;

(2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) Make and amend bylaws and policies, not inconsistent with its articles or with the laws of this state, for managing and regulating the affairs of the corporation;

(4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(7) Make contracts; make guarantees that may reasonably be expected to benefit, directly or indirectly, the guarantor corporation; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of any of its property or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 2701 of this act;

(9) Be a promoter, partner, shareholder, member, trustee, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) Conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit, except as limited by sections 2701 and 2702 of this act;

(12) Pay pensions and establish pension plans, pension trusts, and benefit or incentive plans for any or all

of its current or former directors, officers, employees, and agents, except as limited by section 2702 of this act;

(13) Make donations for charitable purposes;

(14) Impose dues, assessments, admission, and transfer fees on its members;

(15) Establish conditions for admission or removal of members, admit or remove members, and issue memberships;

(16) Carry on a business, and, subject to the requirements of sections 1406 and 2702 of this act, make net profits and accumulate reserves; and

(17) Make payments or donations, or do any other acts, not inconsistent with law, that further the purposes, activities, and affairs of the corporation.

NEW SECTION. **Sec. 1404.** EMERGENCY POWERS. (1) For purposes of this section, an emergency exists if a quorum of the directors cannot readily be assembled because of some catastrophic event. A catastrophic event is a sudden, natural or man-made situation where rapid change or destruction has occurred that has limited normal functions in daily living including communications and travel.

(2) In anticipation of and for the duration of an emergency, the board of a nonprofit corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Take those actions necessary to preserve the corporation and ensure that it acts in accordance with its purposes.

(3) During an emergency, unless the articles or bylaws provide otherwise:

(a) Notice of a meeting of the board need be given only to those directors it is practicable to reach and may be given in any practicable manner;

(b) The quorum required under section 2504 of this act or the articles or bylaws need not be established at such a meeting; and

(c) One or more officers of the nonprofit corporation present at a meeting of the board may be deemed to be directors for purposes of the meeting.

(4) In anticipation of and for the duration of an emergency, any meeting of the membership or of the board of directors may be conducted through one or more means of remote communication through which members or directors not physically present may simultaneously participate with each other during the meeting, notwithstanding any provision of the articles or bylaws that provides otherwise. A member or director participating in a meeting through such means in anticipation of and for the duration of an emergency is considered present in person at the meeting.

(5) Corporate action taken in good faith during an emergency to further the purposes and the ordinary affairs of the nonprofit corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a director, officer, employee, or agent.

NEW SECTION. Sec. 1405. ULTRA VIRES ACTION. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(2) The power of a nonprofit corporation to act may be challenged:

(a) In a proceeding by the corporation, directly or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(b) In a proceeding by the attorney general under section 3605 of this act.

NEW SECTION. Sec. 1406. DISTRIBUTIONS PROHIBITED. (1) A nonprofit corporation shall not distribute any property held for charitable purposes to its members, directors, officers, or other persons who are in a position to exercise substantial influence over the affairs of the corporation, except:

(a) As permitted under section 1407 of this act;

(b) To another entity that is a charitable corporation or is organized and operated exclusively for one or more charitable purposes; or

(c) To the federal government, a tribal government, or a state or local government for a public purpose.

(2) A nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, officers, or other persons who are in a position to exercise substantial influence over the affairs of the corporation, except as permitted under:

(a) Subsection (1)(b) or (c) of this section;

(b) Subsection (3) of this section;

(c) Section 1407 of this act; or

(d) Section 3502 of this act.

(3) A nonprofit corporation other than a charitable corporation may confer benefits upon or make transfers to members or nonmembers in conformity with its purposes, repurchase its memberships only to the extent provided in section 2114 of this act, or repay capital contributions, subject to the following conditions:

(a) Property held for charitable purposes may not be used to confer benefits upon or make transfers to members or nonmembers, repurchase memberships, or repay capital contributions;

(b) The nonprofit corporation may not be insolvent, and conferral of benefits, making of transfers, repurchase of memberships, or repayment of capital contributions shall not render the corporation insolvent or unable to carry out its purposes; and

(c) The fair value of the corporation's assets remaining after the conferring of benefits, making of transfers, repurchase, or repayment must be sufficient to meet the corporation's liabilities.

NEW SECTION. Sec. 1407. REASONABLE COMPENSATION PERMITTED. A nonprofit corporation, including a charitable corporation, may pay reasonable compensation to members, directors, or officers for services rendered, or reimburse reasonable expenses incurred by members, directors, or officers in connection with services rendered.

NEW SECTION. Sec. 1408. PROPERTY HELD FOR CHARITABLE PURPOSES. (1) Property owned by a nonprofit corporation is held for charitable purposes if:

(a) The corporation is a charitable corporation;

(b) The property is subject to restrictions contained in a gift instrument that limit its use only to one or more charitable purposes; or

(c) The property is subject to restrictions contained in the corporation's articles, bylaws, or any record adopted by the corporation's board, or to other limitations in the form of a record, that limit its use only to one or more charitable purposes.

(2) In no event may property held for charitable purposes be distributed in a manner inconsistent with sections 1406, 3404, or 3502 of this act.

NEW SECTION. Sec. 1409. DEBT AND SECURITY INTERESTS. (1) A nonprofit corporation shall not issue bonds or other evidences of indebtedness except for cash or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof.

(2) The board may authorize a mortgage or pledge of, or the creation of a security interest in, all or any part of the property of the nonprofit corporation, or any interest therein. Unless otherwise provided in the articles or bylaws, the vote or consent of the members is not required to make effective such an action by the board.

NEW SECTION. Sec. 1410. PRIVATE FOUNDATIONS. (1) Except as provided in subsection (2) of this section, a nonprofit corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code shall:

(a) Distribute sufficient amounts for each taxable year at a time and in a manner so as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) Not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) Not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) Not make any investments in a manner that subjects the corporation to tax under section 4944 of the Internal Revenue Code; and

(e) Not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(2) Subsection (1) of this section does not apply to a nonprofit corporation incorporated before January 1, 1970, that has been properly relieved from the requirements of section 508(e)(1) of the Internal Revenue Code by a timely judicial proceeding.

ARTICLE 5

GIFT RESTRICTIONS

NEW SECTION. Sec. 1501. UNRESTRICTED GIFTS. Giving a gift to a nonprofit corporation, including a charitable corporation, without a gift instrument transfers complete ownership of the gift to the nonprofit corporation. A restricted gift to a nonprofit corporation is created only by a gift instrument.

NEW SECTION. Sec. 1502. RESTRICTED GIFTS. (1) This section distinguishes between:

(a) Enforceable trusts held by a nonprofit corporation, including a charitable corporation, governed under chapter 11.110 RCW; and

(b) Gift restrictions whose terms may be enforced and are subject to modification under this chapter or other applicable law.

(2) A gift to a nonprofit corporation, including a charitable corporation, does not create a charitable trust unless:

(a) The donor expresses an intent to create a charitable trust; and

(b) The trustee, which may be a charitable corporation, agrees in the form of a record to act as trustee of that trust according to its terms.

(3) Giving a gift to a nonprofit corporation, including a charitable corporation, that is: (a) Accepted by the corporation; (b) not in trust; and (c) subject to material restrictions or requirements contained in a gift instrument transfers complete ownership to the nonprofit corporation. The nonprofit corporation is bound by the material restrictions or requirements contained in the gift instrument.

(4) A nonprofit corporation complies with a term contained in a gift instrument if the nonprofit corporation reasonably complies with all material

restrictions or requirements contained in the term, or, when appropriate under the facts and circumstances, seeks modification in accordance with section 1503 of this act.

(5) If the nonprofit corporation fails to comply with any material restriction or requirement contained in a gift instrument and fails to seek a modification in accordance with section 1503 of this act, then the attorney general may bring a proceeding to enforce the terms of the gift instrument.

NEW SECTION. Sec. 1503. MODIFICATION OR RELEASE OF GIFT RESTRICTIONS. (1) A term of a gift instrument that binds a nonprofit corporation may be modified or released, in whole or in part:

(a) If the donor consents in a record;

(b) As set forth in subsection (2) of this section, if the term is unlawful, impracticable, impossible to achieve, or wasteful;

(c) For gift instruments limiting the use of property to one or more charitable purposes, through a binding agreement executed by the nonprofit corporation, the attorney general, and other interested parties, and filed with or approved by the court in accordance with section 1504 of this act;

(d) By approval of the court in accordance with section 1505 of this act; or

(e) As provided by other applicable law including, but not limited to, chapter 24.55 RCW.

(2) If a nonprofit corporation, including a charitable corporation, determines that a restriction contained in a gift instrument on the management, investment, or purpose of a gift is unlawful, impracticable, impossible to achieve, or wasteful, then the nonprofit corporation, sixty days after notification to the attorney general, may modify the restriction, in whole or part, if:

(a) The gift subject to the restriction has a total value consistent with RCW 24.55.045(4) (a) or any successor provision;

(b) More than twenty years have elapsed since the gift was given; and

(c) The nonprofit corporation uses the gift in a manner consistent with any

charitable purposes expressed in the gift instrument.

(3) Application of sections 1501 through 1506 of this act to existing gifts:

(a) Before January 1, 2023, sections 1501 through 1506 of this act apply to gifts existing on December 31, 2021, only if the nonprofit corporation's board elects to apply sections 1501 through 1506 of this act to existing gifts before January 1, 2023.

(b) On or after January 1, 2023, sections 1501 through 1506 of this act apply to all gifts.

(c) As applied to gifts existing on December 31, 2021, sections 1501 through 1506 of this act govern only decisions made or actions taken on or after January 1, 2023, except that in the case of a nonprofit corporation that makes the election under (a) of this subsection sections 1501 through 1506 of this act govern decisions made or actions taken on or after the date the nonprofit corporation elects to be covered by sections 1501 through 1506 of this act.

NEW SECTION. Sec. 1504. BINDING AGREEMENT TO MODIFY OR RELEASE RESTRICTIONS. (1) If a gift instrument limits the use of the gift to one or more charitable purposes, and the conditions set forth in subsection (3) or (4) of this section are satisfied, then the gift instrument may be modified by agreement of the nonprofit corporation, the attorney general, and all other interested parties.

(2) For purposes of this section, an "interested party" does not include:

(a) The donor; or

(b) Any member of any charitable class that the gift would benefit, either before or after the modifications to be made by the agreement.

(3) A restriction related to a gift's management or investment may be modified by an agreement described in subsection (1) of this section if:

(a) Because of circumstances not anticipated by the donor, modification will further the charitable purpose of the gift;

(b) Enforcement of the restriction has become impracticable or wasteful; or

(c) Enforcement of the restriction impairs the management or investment of the gift.

(4) A restriction on the use of a gift relating to the gift's charitable purpose, rather than its management or investment, may be modified by an agreement described in subsection (1) of this section if the purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

(5) An agreement described in subsection (1) of this section must:

(a) Be in writing and executed by all of the parties;

(b) Be binding and conclusive on the nonprofit corporation and all other parties with a beneficial interest in the gift;

(c) Identify the gift instrument and the term or terms of the gift instrument that it modifies;

(d) Describe completely the modifications that it would make;

(e) Set forth the reasons why the modifications would comply with subsection (3) or (4) of this section; and

(f) State changes to the charitable purposes to which the use of the gift is limited, if any, resulting from the modifications.

(6) The nonprofit corporation or its legal representative may file the executed agreement with the court within thirty days of the agreement's execution by all parties. Upon filing of the executed agreement with the court:

(a) The agreement becomes effective and equivalent to a final court order binding on the nonprofit corporation and all other parties with a beneficial interest in the use of the gift, and

(b) The modifications are deemed approved by the court, and have the same effect as if the court ordered them pursuant to section 1505 of this act.

(7) The nonprofit corporation or its legal representative may, as an alternative to the procedure described in subsection (6) of this section, petition the court for a hearing for presentation of an agreement entered under this section to the court within twenty-one days of the agreement's execution by all parties. The nonprofit corporation shall

(a) provide notice of the time and date of the hearing to each party to the agreement unless that party has waived notice in the form of a record, and (b) file proof of mailing or delivery of the notice or waiver with the court. At the hearing, the court shall review the agreement on behalf of all the parties. The court shall determine whether the agreement adequately represents and protects the interests of the parties and the public interest, and enter an order declaring its determination. If the court determines that the agreement does not adequately represent and protect those interests, then the agreement is void.

NEW SECTION. **Sec. 1505.** JUDICIAL MODIFICATION OR RELEASE OF RESTRICTIONS.

(1) Upon application by a corporation subject to a restriction related to a gift's management or investment, rather than to its charitable purpose, the court may modify the restriction if:

(a) Because of circumstances not anticipated by the donor, modification will further the charitable purpose of the gift;

(b) Enforcement of the restriction has become impracticable or wasteful; or

(c) Enforcement of the restriction impairs the management or investment of the gift.

(2) Upon application by a corporation subject to a restriction on the use of a gift relating to the charitable purpose of the gift, rather than its management or investment, the court may modify the restriction if the purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

(3) If the gift instrument provides for a forfeiture or gift-over to an alternative beneficiary, then the court may modify one or more restrictions under the procedure set out in subsection (1) of this section if a management or investment provision fails. The court may not, however, modify any restriction under the procedure set out in subsection (2) of this section to defeat the interest of an alternate beneficiary unless the beneficiary would also be subject to, and unable to perform, the term requiring modification. The alternative beneficiary is entitled to notice and may participate in the determination of whether to grant modification.

(4) Any modification made by the court must, to the extent possible, be made in a manner consistent with the charitable purposes as expressed in the gift instrument.

(5) A nonprofit corporation shall notify the attorney general whenever it seeks to modify a charitable gift restriction under this section and the court shall offer the attorney general an opportunity to be heard.

NEW SECTION. Sec. 1506. CHARITABLE PURPOSE SURVIVES. Modification or release of a gift restriction shall not allow a gift to be used for a purpose other than a charitable purpose.

ARTICLE 6

BOOKS AND RECORDS

NEW SECTION. Sec. 1601. CORPORATE RECORDS. (1) A nonprofit corporation shall keep permanently a copy of the following records:

(a) Minutes of all meetings of its members and of its board of directors;

(b) A record of all actions taken by the members and board of directors by unanimous written consent; and

(c) A record of all actions taken on behalf of the corporation by a committee of the board.

(2) A nonprofit corporation shall keep a current copy of the following records:

(a) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) All communications in the form of a record to members generally within the past six years, including the financial statements furnished for the past six years under section 1604 of this act;

(d) A list of the names and business addresses of its current directors and officers; and

(e) Its most recent annual report delivered to the secretary of state under section 1204 of this act.

(3) A nonprofit corporation shall maintain appropriate accounting records.

(4) A membership corporation or its agent shall maintain a record of its

members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(5) A nonprofit corporation shall maintain its records in written form or in any other form of a record.

(6) All records required to be maintained by a nonprofit corporation may be maintained at any location within or without this state.

NEW SECTION. Sec. 1602. INSPECTION BY MEMBERS. (1) A member of a nonprofit corporation may inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the records the corporation is required to maintain under section 1601(2) of this act, if the member delivers to the corporation an executed notice in the form of a record at least five business days before the date on which the member wishes to inspect and copy the records.

(2) Subject to the limitations set forth in subsections (3) and (4) of this section, a member of a nonprofit corporation may inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation, if the member delivers to the corporation an executed notice in the form of a record at least five business days before the date on which the member wishes to inspect and copy the records:

(a) Excerpts from those minutes and records required to be maintained under section 1601(1) of this act;

(b) Accounting records of the corporation described in section 1601(3) of this act; and

(c) Subject to section 1607 of this act, the membership list described in section 1601(4) of this act.

(3) A nonprofit corporation may withhold from inspection under this section:

(a) Those portions of records that contain information protected by the attorney-client privilege or related work product;

(b) The address of any member who is known to the corporation to be a participant in the address confidentiality program described in

chapter 40.24 RCW or any similar program established by law;

(c) Those portions of records, which, if disclosed, would be reasonably likely to result in harm to the corporation or a third party, such as disciplinary actions involving nondirector members, identities of job applicants, discussions of strategic acquisitions, records that are required to be kept confidential under obligations to a third party, etc.; or

(d) Any information that a nonprofit corporation is required to keep confidential under any other law.

(4) A member may inspect and copy the records described in subsection (2) of this section only if the:

(a) Member's demand is made in good faith and for a proper purpose;

(b) Member describes with reasonable particularity the purpose and the records the member desires to inspect;

(c) Member agrees in the form of a record to reasonable restrictions required by the board on the use or distribution of the records; and

(d) Records are directly connected with this purpose.

(5) The right of inspection granted by this section may not be abolished or limited by a nonprofit corporation's articles or bylaws.

(6) This section does not affect the:

(a) Right of a member to inspect records as part of discovery in connection with litigation; or

(b) Power of any court of competent jurisdiction, independently of this chapter, to compel the production of corporate records for examination.

NEW SECTION. Sec. 1603. SCOPE OF MEMBER'S INSPECTION RIGHT. (1) A member's agent or attorney has the same inspection and copying rights as the member represented.

(2) The right to copy records under section 1602 of this act includes, if reasonable, the right to receive copies. Copies may be provided through electronic transmission unless the member requests otherwise in the form of a record.

(3) The nonprofit corporation may comply with a member's demand to inspect and copy the list of members under

section 1602(2)(c) of this act by providing the member for a reasonable charge as described in subsection (4) of this section with a list of members that was compiled no earlier than the date of the member's demand.

(4) The nonprofit corporation shall provide a copy of its articles and bylaws at no cost to a member on request. The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any other documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

NEW SECTION. Sec. 1604. FINANCIAL STATEMENTS FOR MEMBERS. (1) Except as provided in the articles or bylaws of a nonprofit corporation engaged in religious activity, upon a demand in the form of a record from a member, a corporation shall furnish that member with its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, then the annual financial statements must also be prepared on that basis.

(2) If the annual financial statements are reported upon by a certified public accountant, then the accountant's report shall accompany them. If not, then the statements must be accompanied by a statement of the president or the person responsible for the nonprofit corporation's accounting records:

(a) Stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

NEW SECTION. Sec. 1605. COURT-ORDERED INSPECTION. (1) If a nonprofit corporation does not allow a member who complies with section 1602(1) of this act to inspect and copy any records required by that subsection to be available for

inspection, then the court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a nonprofit corporation does not within a reasonable time allow a member to inspect and copy any other record to which the member is entitled under section 1602(2) of this act, then the member who complies with section 1602 (3) and (4) of this act may apply to the court for an order to permit inspection and copying of the records demanded. The court may inspect the records in question *in camera* and determine the extent of required disclosure, if any, in light of section 1602 of this act. In making that determination, the court shall consider the probability and extent of potential harm to the corporation or any third party that may result from inspection, and the probability and extent of benefit to the corporation or the member.

(3) If the court orders inspection and copying of the records demanded, then it shall also order the nonprofit corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. If the court denies the majority of the request for inspection and copying, it may order the member to pay part or all of the nonprofit corporation's costs, including reasonable attorneys' fees.

(4) If the court orders inspection and copying of the records demanded, then it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

NEW SECTION. **Sec. 1606.** INSPECTION BY DIRECTORS. (1) A director of a nonprofit corporation may inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this chapter.

(2) The court may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has

been refused the inspection rights set out in subsection (1) of this section, unless the corporation establishes that the director is not entitled to those inspection rights.

(3) If an order is issued, then the court may include provisions protecting the nonprofit corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable attorneys' fees, incurred in connection with the application.

NEW SECTION. **Sec. 1607.** USE OF MEMBERSHIP LIST. (1) Without the consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof may not be:

(a) Used to solicit cash or other property unless the cash or other property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(b) Used for any commercial purpose; or

(c) Sold to or purchased by any person.

(2) Instead of making a membership list available for inspection and copying under sections 1601 through 1607 of this act, a nonprofit corporation may elect to proceed under the procedures set forth in section 2304(6) of this act.

ARTICLE 7

PUBLIC BENEFIT CORPORATIONS

NEW SECTION. **Sec. 1701.** PUBLIC BENEFIT DESIGNATION. (1) There is hereby established the special designation of "public benefit nonprofit corporation." A corporation may be designated as a public benefit nonprofit corporation if it meets the following requirements:

(a) The corporation complies with this chapter; and

(b) The corporation is currently recognized by the internal revenue service as an organization described in section 501(c) (3) of the Internal Revenue Code or is exempt from applying for that

recognition under section 508(c) of the Internal Revenue Code.

(2) A temporary designation as a public benefit nonprofit corporation may be provided to a corporation that has applied to the internal revenue service for recognition of its status as an organization described in section 501(c)(3) of the Internal Revenue Code. The temporary designation is valid for up to one year and may be renewed at the discretion of the secretary of state.

(3) Designation of a corporation as a public benefit nonprofit corporation does not alter the applicability to the corporation of any other provision of this chapter.

NEW SECTION. Sec. 1702. APPLICATION AND RENEWAL. (1) The secretary of state shall develop an application process for new and existing corporations to apply for public benefit nonprofit corporation status.

(2) Public benefit nonprofit corporation status must be renewed annually. The secretary of state may schedule renewals in conjunction with the corporation's annual report.

NEW SECTION. Sec. 1703. REMOVAL OF STATUS. The secretary of state may remove a corporation's public benefit nonprofit corporation designation if the corporation does not comply with this chapter or the internal revenue service revokes recognition of the corporation's status as an organization described in section 501(c)(3) of the Internal Revenue Code.

ARTICLE 8

FOREIGN CORPORATIONS

NEW SECTION. Sec. 1801. REGISTRATION TO DO BUSINESS. A foreign nonprofit corporation may not do business in this state until it registers with the secretary of state pursuant to chapter 23.95 RCW.

NEW SECTION. Sec. 1802. EFFECT OF REGISTRATION. (1) A foreign nonprofit corporation with a valid foreign registration statement has the same but no greater rights and has the same but no greater privileges as, and except as provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic nonprofit corporation of like character.

(2) This chapter does not authorize this state to regulate the organization or internal affairs of a registered foreign nonprofit corporation.

(3) For those corporations that have a certificate of authority, are applying for, or intend to apply for a certificate of authority from the insurance commissioner as an insurance company under chapter 48.05 RCW, whenever under this chapter corporate records are required to be delivered to the secretary of state for filing, the records must be delivered to the insurance commissioner rather than the secretary of state.

NEW SECTION. Sec. 1803. NAME OF FOREIGN CORPORATION. (1) The name of a registered foreign nonprofit corporation, any name reserved by a registered foreign nonprofit corporation, or any alternate name adopted under RCW 23.95.525 is governed by chapter 23.95 RCW.

(2) A foreign nonprofit corporation not registered to do business in this state may register its name, or an alternate name adopted pursuant to RCW 23.95.525, under RCW 23.95.315.

NEW SECTION. Sec. 1804. REGISTERED AGENT OF FOREIGN CORPORATION. (1) Each registered foreign nonprofit corporation in this state shall designate and maintain a registered agent in this state.

(2) The designation and maintenance of a foreign nonprofit corporation's registered agent are governed by chapter 23.95 RCW.

NEW SECTION. Sec. 1805. SERVICE ON FOREIGN CORPORATION. (1) A registered foreign nonprofit corporation may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(2) Service upon a registered foreign nonprofit corporation made by serving its registered agent, or service on the registered foreign nonprofit corporation in the absence of a registered agent, is governed by chapter 23.95 RCW.

NEW SECTION. Sec. 1806. WITHDRAWAL OF REGISTRATION. A registered foreign nonprofit corporation may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing under RCW 23.95.530.

NEW SECTION. Sec. 1807. WITHDRAWAL UPON CONVERSION OR DISSOLUTION. (1) A

registered foreign nonprofit corporation that converts to any type of domestic entity automatically is deemed to have withdrawn its registration on the effective date of the conversion.

(2) A registered foreign nonprofit corporation that has dissolved and completed winding up or has converted to a domestic or foreign entity not required to register under chapter 23.95 RCW or other law of this state shall deliver a statement of withdrawal to the secretary of state for filing under RCW 23.95.540.

(3) After the withdrawal of a foreign nonprofit corporation under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign nonprofit corporation was registered to do business in this state may be made pursuant to RCW 23.95.450.

NEW SECTION. Sec. 1808. AMENDMENT TO REGISTRATION UPON CONVERSION. A registered foreign nonprofit corporation that converts to a foreign for-profit corporation or to any form of foreign unincorporated entity that is required to register with the secretary of state to do business in this state shall deliver to the secretary of state for filing an amendment to its foreign registration statement under RCW 23.95.515.

NEW SECTION. Sec. 1809. TRANSFER OF REGISTRATION. (1) If a registered foreign nonprofit corporation merges into a nonregistered foreign entity or converts to a different type of foreign entity required to register to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration under RCW 23.95.545.

(2) If a registered foreign nonprofit corporation is a party to a statutory merger permitted by the laws of the jurisdiction where it is incorporated, and the corporation is the surviving corporation, it is not necessary for the corporation to register to do business or to amend its registration unless the corporation's name is changed.

NEW SECTION. Sec. 1810. TERMINATION OF REGISTRATION. The secretary of state may terminate the registration of a registered foreign nonprofit corporation under RCW 23.95.550:

(1) For any reason set forth in RCW 23.95.550(1);

(2) If the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or did not survive a merger; or

(3) If the corporation has continued to exceed or abuse the authority conferred upon it by this chapter.

NEW SECTION. Sec. 1811. JUDICIAL REVIEW OF TERMINATION. (1) A foreign nonprofit corporation may appeal the secretary of state's termination of its registration to the superior court of Thurston county within ninety days after service of the statement of termination is perfected. The foreign nonprofit corporation shall appeal by petitioning the court to set aside the termination and attaching to the petition copies of its statement of registration and the secretary of state's statement of termination.

(2) The court may summarily order the secretary of state to reinstate the registration or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

PART II

GOVERNANCE

ARTICLE 1

MEMBERS AND MEMBERSHIPS

NEW SECTION. Sec. 2101. MEMBERS. (1) A nonprofit corporation may have one or more classes of members or may have no members.

(2) For corporations formed on or after January 1, 2022, notwithstanding anything to the contrary in the bylaws, where the articles of a nonprofit corporation do not provide that it has members, the nonprofit corporation does not have members.

(3) For organizations formed before January 1, 2022, where the articles of a nonprofit corporation do not provide that it has members, the corporation has members only if the bylaws:

(a) Provide that the corporation has members; and

(b) Provide that members of at least one class have the right to select or

vote for the election of directors or delegates or to vote on at least one type of fundamental transaction.

(4) Where a nonprofit corporation does not have members under this section, or where a corporation has no members entitled to vote on a given matter, any provision of this chapter or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members in connection with that matter is satisfied by notice to, the presence of, or the vote, consent, or other action by the board.

NEW SECTION. Sec. 2102. SCOPE OF MEMBERSHIP. A person is not a member of a nonprofit corporation for purposes of any provision of this chapter unless the person meets the definition of "member" in section 1102 of this act, regardless of whether the corporation refers to or designates the person as a member.

NEW SECTION. Sec. 2103. ADMISSION OF MEMBERS. (1) The articles or bylaws of a membership corporation may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without the person's consent. Consent may be express or implied and need not be in the form of a record.

(3) If a membership corporation provides certificates of membership to the members, then the certificates shall not be registered or transferable except as provided in the articles or bylaws or by resolution of the board.

NEW SECTION. Sec. 2104. CONSIDERATION FOR ADMISSION. Except as provided in its articles or bylaws, a membership corporation may admit members for no consideration or for consideration determined by the board, which may take any form, including promissory notes, intangible property, or past or future services. Payment of the consideration may be made at those times and upon those terms as are set forth in or authorized by the articles, bylaws, or a resolution of the board.

NEW SECTION. Sec. 2105. CAPITAL CONTRIBUTIONS. (1) A membership corporation that is not a charitable corporation may provide in its articles or bylaws that members, upon or after admission, shall make capital contributions. Except as provided in the articles or bylaws, the board shall fix the amount. The requirement of a capital

contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions.

(2) The adoption or amendment of a capital contribution requirement, whether or not approved by the members, shall not apply to, or be an obligation of, a member who did not vote in favor of the adoption or amendment until thirty days after the member has been given notice of the adoption or amendment.

NEW SECTION. Sec. 2106. RIGHTS AND OBLIGATIONS. (1) The members of a membership corporation have only those rights, privileges, powers, or obligations specifically given or assigned to members in the articles, the bylaws, or section 2313 of this act.

(2) A member shall not have the right to vote on any matter unless the articles, the bylaws, or section 2313(1) of this act provides expressly that the class of members to which that member belongs has the right to vote on that particular matter.

NEW SECTION. Sec. 2107. DIFFERENCES IN RIGHTS AND OBLIGATIONS. (1) Except as provided in the articles or bylaws, each member of a membership corporation has the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and other matters.

(2) If the corporation has one or more classes of members, then the designation of the class or classes, the articles, or the bylaws shall set forth the manner of election or appointment and the qualifications and rights of the members of each class.

NEW SECTION. Sec. 2108. TRANSFERS OF MEMBERSHIP. (1) Except as provided in the articles or bylaws or by resolution of the board, a member of a membership corporation may not transfer a membership or any right arising therefrom.

(2) Where the right to transfer a membership has been provided, a restriction on that right shall not be binding with respect to a member holding a membership issued before the adoption of the restriction unless the affected member consents to the restriction in the form of a record.

NEW SECTION. Sec. 2109. MEMBER'S LIABILITY FOR CORPORATE OBLIGATIONS. A member of a membership corporation is not

personally liable for the acts, debts, liabilities, or obligations of the corporation.

NEW SECTION. **Sec. 2110.** MEMBER'S LIABILITY FOR DUES, FEES, AND ASSESSMENTS. (1) A membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles or bylaws. Particular dues, assessments, and fees may be imposed in the articles or bylaws or by resolution of the board, subject to any membership approval required under section 3112(1) of this act, on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees to the extent provided in the articles or bylaws or by resolution of the board.

(2) The amount and method of collection of dues, assessments, and fees may be fixed in the articles or bylaws, or the articles or bylaws may authorize the board or members to fix the amount and method of collection, with or without approval of the class or classes of members affected.

(3) The articles or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

NEW SECTION. **Sec. 2111.** CREDITOR'S ACTION AGAINST MEMBER. (1) A proceeding may not be brought by a creditor of a membership corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part.

(2) All creditors of a membership corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.

NEW SECTION. **Sec. 2112.** RESIGNATION OF MEMBER. (1) A member of a membership corporation may resign at any time.

(2) The resignation of a member does not relieve the member from any

obligations incurred or commitments made before resignation.

NEW SECTION. **Sec. 2113.** TERMINATION AND SUSPENSION OF MEMBER. (1) A membership in a membership corporation may be terminated or suspended for the reasons and in the manner provided in the articles or bylaws.

(2) A membership in a membership corporation may also be terminated, regardless of the procedure set forth in the articles or bylaws, if:

(a) The corporation has had no contact from the member for at least three years; and

(b) Either:

(i) The member fails to respond within ninety days to a request from the corporation to update the member's contact information that includes a statement that failure to respond could result in termination of membership, delivered to that member by means reasonably likely to reach that member; or

(ii) A request from the corporation to update the member's contact information that includes a statement that failure to respond could result in termination of membership, sent to that member by first-class forwardable mail, with postage prepaid, is returned as undeliverable; or

(iii) If members, or a class of members, are not identified individually on the records of the corporation, a request from the corporation for members to provide contact information that includes a statement that failure to respond could result in termination of membership is published once a week for six consecutive weeks in a newspaper of general circulation in the county in which the corporation's principal office is located.

(3) Unless otherwise provided in the articles or bylaws, if the articles or bylaws allow the board or any other body to admit members, the affirmative vote of two-thirds of that body may terminate a member.

(4) Irrespective of anything to the contrary in the articles or bylaws, in any proceeding involving a corporation or upon application from the corporation, the court may order termination of a member of the corporation in the best interests of the corporation.

(5) A proceeding challenging a termination or suspension for any reason must be commenced within one year after the effective date of the termination or suspension.

(6) The termination or suspension of a member does not relieve the member from any obligations incurred or commitments made before the termination or suspension.

NEW SECTION. Sec. 2114. REPURCHASE OF MEMBERSHIPS. A membership corporation that is not a charitable corporation may repurchase any of its memberships or any right arising therefrom only if it is so provided in the articles or bylaws. A membership corporation that is a charitable corporation may not repurchase any of its memberships or any right arising therefrom.

ARTICLE 2

DELEGATES

NEW SECTION. Sec. 2201. DELEGATES. (1) A membership corporation may provide in its articles or bylaws for delegates.

(2) The articles or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(b) Calling, noticing, holding, and conducting meetings of delegates; and

(c) Carrying on activities during and between meetings of delegates.

(3) If the articles or bylaws provide for delegates, then, unless otherwise provided in the articles or bylaws:

(a) The power to appoint, remove, or modify any provision of the articles or bylaws governing the appointment or removal of delegates is reserved to the members.

(b) All other powers of members including, but not limited to, the right to vote on other amendments to articles or bylaws, may be exercised by delegates.

ARTICLE 3

MEMBERSHIP MEETINGS AND VOTING

NEW SECTION. Sec. 2301. ANNUAL AND REGULAR MEETINGS. (1) A membership corporation shall hold an annual meeting of members once during each fiscal year

at a time stated in or fixed in accordance with the articles or bylaws.

(2) A membership corporation may hold regular meetings on a regional or other basis at times stated in or fixed in accordance with the articles or bylaws.

(3) Except as provided in subsection (5) of this section, annual and regular meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles or bylaws. If no place is stated in or fixed in accordance with the articles or bylaws, then annual and regular meetings shall be held at the membership corporation's principal office.

(4) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles or bylaws does not affect the validity of any corporate action.

(5) The articles or bylaws may provide that an annual or regular meeting of members may be held in a specified location and, if so provided under the articles or bylaws, through one or more means of remote communication through which members not physically present may participate in the meeting substantially concurrently, vote on matters submitted to the members, pose questions, and make comments. For any meeting at which one or more members may participate by means of remote communication, the corporation shall deliver notice of the meeting to each member by a means which the member has authorized and provide complete instructions for participating in the meeting by remote communication.

NEW SECTION. Sec. 2302. SPECIAL MEETINGS. (1) A membership corporation shall hold a special meeting of members:

(a) At the call of its board of directors, the president, or the persons authorized to do so by the articles or bylaws; or

(b) Upon the execution and delivery to the corporation of one or more demands for a special meeting, in the form of a record, describing the purpose for which the meeting is to be held, by either:

(i) The number or proportion of members entitled under the articles or bylaws to call a meeting on the subject matter proposed to be considered at the proposed special meeting, which shall not represent more than twenty-five percent

of all the votes entitled to be cast on that subject matter; or

(ii) In the absence of a provision fixing the number or proportion of members entitled to call a meeting, the number or proportion of members representing five percent of all the votes entitled to be cast on the subject matter proposed to be considered at the proposed special meeting.

(2) Unless otherwise provided in the articles or bylaws, a demand for a special meeting may be revoked by notice to that effect received by the membership corporation from the members calling the meeting before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(3) If not otherwise fixed under section 2303 or 2307 of this act, the record date for determining members entitled to demand a special meeting is the date the first member executes a demand.

(4) Only business within the purpose or purposes described in the meeting notice required by section 2305(3) of this act may be conducted at a special meeting of the members.

(5) Except as provided in subsection (6) of this section, special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles or bylaws. If no place is stated or fixed in accordance with the articles or bylaws, then special meetings shall be held at the corporation's principal office.

(6) The articles or bylaws may provide that a special meeting of members be held at a specified location and, unless otherwise provided under the articles or bylaws, through means of remote communication through which members not physically present may participate in the meeting substantially concurrently, vote on matters submitted to the members, pose questions, and make comments. Notice of meetings at which one or more members may participate by means of remote communication must be delivered by a means which the member has authorized and provide complete instructions for participating in the meeting from a remote location.

NEW SECTION. Sec. 2303. COURT-ORDERED MEETING. (1) The court may summarily order a meeting to be held:

(a) On application of any member entitled to participate in an annual or regular meeting if an annual meeting was not held within eighteen months after the last annual meeting; or

(b) On application of a member who executed a demand for a special meeting under section 2302 of this act that was executed by a sufficient number of members to call a meeting, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of a court-ordered meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the court-ordered meeting.

NEW SECTION. Sec. 2304. LIST OF MEMBERS FOR MEETING. (1) After fixing a record date for a meeting, a membership corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of that meeting of the members. The list of members shall show the address of and number of votes each member is entitled to cast at the meeting, except that the address of any member who is known to the corporation to be a participant in the address confidentiality program described in chapter 40.24 RCW or any similar law may be omitted.

(2) The list of members must be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the membership corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member or the member's agent, on demand in the form of a record, may inspect and, subject to the requirements of section 1602(4) of this act, copy the list, during regular business hours and at the

member's expense, during the period it is available for inspection.

(3) The membership corporation shall make the list of members available at the meeting, and a member or the member's agent may inspect the list at any time during the meeting or any adjournment.

(4) If a membership corporation refuses to allow a member or the member's agent to inspect the list of members before or at the meeting or copy the list as permitted by subsection (2) of this section, then the court, on application of the member, may:

(a) Summarily order the inspection or copying at the corporation's expense;

(b) Postpone the meeting for which the list was prepared until the inspection or copying is complete;

(c) Order the corporation to pay the member's costs including reasonable attorneys' fees incurred to obtain the order; and

(d) Order other appropriate relief.

(5) Refusal or failure to prepare or make available the list of members does not affect the validity of action taken at the meeting.

(6) Instead of making the list of members available as provided in subsection (2) of this section, a membership corporation may state in a notice of meeting that the corporation has elected to proceed under this subsection. A member of a corporation that has elected to proceed under this subsection shall state in the member's demand for inspection a proper purpose for inspection. Within ten business days after receiving a demand under this subsection, the corporation shall deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the corporation from making the list of members available under subsection (4)(b) of this section, unless within a reasonable time after acceptance of the offer the corporation fails to do the things it offered to do. Any rejection of the corporation's offer must be in the form of a record and indicate the reasons the alternative

proposed by the corporation does not meet the proper purpose of the demand.

NEW SECTION. Sec. 2305. NOTICE OF MEMBERSHIP MEETING. (1) A membership corporation shall give notice to the members of the date, time, and place of each annual, regular, or special meeting of the members. Except as provided under subsection (6) of this section, the notice must be given in the form of a record no fewer than ten nor more than sixty days before the meeting date. Except as provided in this chapter, the articles, or the bylaws, the corporation is only required to give notice to members entitled to vote at the meeting.

(2) Unless this chapter, the articles, or the bylaws require otherwise, notice of an annual or regular meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose for which the meeting is called.

(4) If not otherwise fixed under section 2303 or 2307 of this act, the record date for determining members entitled to notice of and to vote at an annual or special meeting of the members is the day before the first notice is given to members.

(5) Unless the articles or bylaws require otherwise, if an annual, regular, or special meeting of the members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or is required to be fixed under section 2307 of this act, then the corporation shall give notice of the adjourned meeting to the members entitled to vote on the new record date.

(6) Notice of regular meetings other than the annual meeting may be made by providing each member with the adopted schedule of regular meetings for the ensuing year in the form of a record at any time after the annual meeting and ten days before the next succeeding regular meeting and at any time requested by a member or by any other notice prescribed by the bylaws.

(7) Whenever notice would otherwise be required to be given under any provision of this chapter to a member, the notice need not be given if notice of two

consecutive annual meetings, and all notices of meetings during the period between those two consecutive annual meetings, have been returned undeliverable or could not be delivered. If a member delivers to the nonprofit corporation a notice setting forth the member's then current address, then the requirement that notice be given to that member is reinstated.

NEW SECTION. **Sec. 2306.** WAIVER OF NOTICE. (1) A member may waive any notice required by this chapter, the articles, or the bylaws no more than sixty days before or sixty days after the date and time stated in the notice or of the meeting or action. The waiver must be in the form of a record, be executed by the member entitled to the notice, and be delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(2) The attendance of a member at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting or immediately upon arrival at the meeting objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects at the meeting to considering the matter.

NEW SECTION. **Sec. 2307.** RECORD DATE. (1) The articles or bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a meeting of the members, to demand a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or provide for fixing a record date, then the board of the membership corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members.

(3) A determination of members entitled to notice of or to vote at a meeting of the members is effective for any adjournment of the meeting unless the board fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty days

after the date fixed for the original meeting.

(4) If the court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, then it may provide that the original record date continues in effect or it may fix a new record date.

NEW SECTION. **Sec. 2308.** CONDUCT OF MEETING. (1) At each meeting of members, an individual shall preside as chair. The chair is appointed and may be removed:

(a) As provided in the articles or bylaws;

(b) In the absence of a provision in the articles or bylaws, by the board; or

(c) In the absence of both a provision in the articles or bylaws and an appointment by the board, by the members at the meeting.

(2) Except as provided in the articles or bylaws or by resolution of the board, the chair determines the order of business and has the authority to establish rules for the order and conduct of the meeting.

(3) Any rules established for the order and conduct of the meeting pursuant to subsection (2) of this section must be fair to the members.

(4) Except as provided in the articles or bylaws or by resolution of the board:

(a) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon.

(b) If no announcement is made, then the polls are deemed to have closed upon the final adjournment of the meeting.

(c) After the polls close, no ballots, proxies, or votes, nor any otherwise permissible revocations or changes thereto may be accepted.

NEW SECTION. **Sec. 2309.** PROXIES. (1) Except as provided in the articles or bylaws, a member may not vote by proxy.

(2) If the articles or bylaws allow members to vote by proxy, then the following procedure applies unless the articles or bylaws provide otherwise:

(a) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by executing an appointment form in the form of a record. An appointment form must contain or be accompanied by information

from which it can be determined that the member or the member's agent or attorney-in-fact authorized the appointment of the proxy.

(b) An appointment of a proxy is effective when an executed appointment in the form of a record is received by the inspectors of election, the officer or agent of the membership corporation authorized to tabulate votes, or the secretary. An appointment is valid for eleven months unless a shorter or longer period is expressly provided in the appointment form.

(c) The death or incapacity of the member appointing a proxy does not affect the right of the membership corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspectors of election, the officer or agent authorized to tabulate votes, or the secretary before the proxy exercises his or her authority under the appointment.

(d) A membership corporation may accept the proxy's vote or other action as that of the member making the appointment, subject to section 2314 of this act and to any express limitation on the proxy's authority stated in the appointment form.

(e) A proxy may be revoked by a member by delivering notice in the form of a record to the corporation before the corporation has relied upon the proxy.

NEW SECTION. **Sec. 2310.** VOTING ENTITLEMENT OF MEMBERS. Except as provided in the articles or bylaws, each member is entitled to one vote on each matter on which the articles or bylaws entitle the members of the class of members to which the member belongs to vote.

NEW SECTION. **Sec. 2311.** MEMBERSHIP QUORUM AND VOTING REQUIREMENTS. (1) Members may take action at a meeting on matters with respect to which all of the members are entitled to vote only if a quorum of the members is present. Except as provided in the articles or the bylaws, ten percent of the votes entitled to be cast at a meeting of the members constitutes a quorum with respect to those matters.

(2) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members is present with respect to that matter. Except as provided in the

articles or bylaws, ten percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(3) Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or is required to be set for that adjourned meeting.

(4) If a quorum is present, then action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles, bylaws, or applicable law require a greater number of affirmative votes.

(5) An amendment of the articles or bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (4) of this section is governed by section 2312 of this act.

(6) If a meeting cannot be organized because a quorum of members entitled to vote is not present, then those members present may adjourn the meeting to such a time and place as they may determine. When a meeting that has been adjourned for lack of a quorum is reconvened, those members present, although less than a quorum as fixed in this section, the articles, or the bylaws, nonetheless constitute a quorum, if notice of the time and place of the reconvened meeting is provided by electronic transmission or in person to the members entitled to vote at least twenty-four hours before the reconvened meeting, or by other methods pursuant to the requirements and procedures set forth in section 2305 of this act. The articles or the bylaws may, however, permit the reconvening of a meeting without notice, by means of a provision that makes explicit reference to elimination of the notice requirement that would otherwise apply under this section.

(7) The election of directors is governed by section 2313 of this act.

NEW SECTION. **Sec. 2312.** DIFFERING QUORUM AND VOTING REQUIREMENTS. (1) The articles or bylaws may provide for a higher or lower quorum or higher voting requirement for members or voting groups of members than is provided for by this

chapter, either generally or with respect to specific matters.

(2) An amendment to the articles or bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

NEW SECTION. **Sec. 2313.** VOTING FOR DIRECTORS. (1) Except as provided in the articles or bylaws, directors of a membership corporation are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

(2) Except as provided in the articles or bylaws, or under subsection (3) of this section, members do not have a right to cumulate their votes for directors.

(3) Members of a nonprofit corporation who were entitled to cumulate their votes for the election of directors on the effective date of this chapter continue to be entitled to cumulate their votes for the election of directors until otherwise provided in the articles or bylaws of the corporation.

NEW SECTION. **Sec. 2314.** ACCEPTANCE OF BALLOTS, CONSENTS, WAIVERS, OR PROXIES. (1) If the name signed on a ballot, consent, waiver, or proxy appointment corresponds to the name of a member, then the membership corporation if acting in good faith may accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a ballot, consent, waiver, or proxy appointment does not correspond to the name of its member, then the membership corporation if acting in good faith is nevertheless entitled to accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented

with respect to the ballot, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the ballot, consent, waiver, or proxy appointment; and

(e) Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The membership corporation may reject a ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The membership corporation and its officer or agent who accepts or rejects a ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or section 2309(2) of this act are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a ballot, consent, waiver, or proxy appointment under this section is valid unless the court determines otherwise.

NEW SECTION. **Sec. 2315.** INSPECTORS OF ELECTION. (1) A membership corporation may appoint one or more inspectors to act at a meeting of members and make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

(2) The inspectors must:

(a) Ascertain the number of members and delegates, and their voting power;

(b) Determine the members and delegates present at a meeting;

(c) Determine the validity of proxies and ballots;

(d) Count all votes; and

(e) Determine the result.

(3) An inspector may, but need not, be a director, member, officer, or employee of the membership corporation. A person who is a candidate for office to be filled at the meeting may not be an inspector.

NEW SECTION. **Sec. 2316.** ACTION BY VOTING GROUPS. (1) If this chapter, the articles, or the bylaws provide for voting by a single voting group on a matter, then action on that matter is taken when voted upon by that voting group as provided in section 2311 or 2318 of this act.

(2) If this chapter, the articles, or the bylaws provide for voting by two or more voting groups on a matter, then action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 2311 or 2318 of this act.

NEW SECTION. **Sec. 2317.** VOTING AGREEMENTS. (1) If the articles or bylaws allow voting agreements, then two or more members may provide for the manner in which they will vote by executing an agreement in the form of a record for that purpose, to the extent allowed under the articles or bylaws.

(2) A voting agreement is specifically enforceable if:

(a) The voting agreement is allowed under the articles or bylaws; or

(b) The effective date of the voting agreement is before the effective date of this section.

(3) Notwithstanding subsection (2) of this section, no voting agreement is enforceable to the extent that enforcement of the agreement would violate the purposes of the membership corporation.

NEW SECTION. **Sec. 2318.** ACTION WITHOUT MEETING BY UNANIMOUS WRITTEN CONSENT. (1) Except as provided in the articles or bylaws, action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting if the action is taken by all the members entitled to vote on

the action. The action must be evidenced by one or more consents in the form of a record bearing the date of execution and describing the action taken, executed by all the members entitled to vote on the action, and delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under section 2303 or 2307 of this act, the record date for determining members entitled to take action without a meeting is the date the first member executes the consent under subsection (1) of this section. A consent shall not be effective to take the corporate action referred to therein unless, within sixty days after the earliest date appearing on a consent delivered to the membership corporation in the manner required by this section, consents executed by all members entitled to vote on the action are received by the corporation. A consent may be revoked by an executed notice in the form of a record to that effect received by the corporation before receipt by the corporation of unrevoked consents sufficient in number to take corporate action.

(3) A consent executed under this section has the same force and effect as a unanimous vote at a meeting duly called and held, and may be described as such.

(4) If this chapter, the articles, or the bylaws require that prior notice of any proposed action be given to members not entitled to vote on the action and the action is to be taken by consent of the members entitled to vote, then the membership corporation shall deliver to the members not entitled to vote notice of the proposed action at least ten days before taking the action by consent. The notice must contain or be accompanied by the same material that would have been required to be delivered to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

NEW SECTION. **Sec. 2319.** ACTION WITHOUT MEETING BY BALLOT. (1) Except as otherwise restricted by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the membership corporation delivers a ballot to every member entitled to vote on the matter.

(2) A ballot must:

(a) Be in the form of a record;

(b) Set forth each proposed action;

(c) Provide an opportunity to vote, or withhold a vote, separately for each candidate for a director position; and

(d) Provide an opportunity to vote for or against each other proposed action.

(3) Approval by ballot pursuant to this section of action other than election of directors is valid only when the number of ballots returned equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All requests for votes by ballot must:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify the time by which a ballot must be received by the membership corporation to be counted, which shall not be less than ten days after the ballot is delivered to the member.

(5) Except as provided in the articles or bylaws, a ballot may not be revoked.

NEW SECTION. Sec. 2320. PROCEDURE FOR REMOTE MEETINGS. When provided for in the articles or bylaws, meetings of the members held by remote communication must follow the provisions of sections 2301 through 2319 of this act to the greatest practicable extent.

ARTICLE 4

BOARD OF DIRECTORS

NEW SECTION. Sec. 2401. BOARD OF DIRECTORS—AUTHORITY. (1) A nonprofit corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of the board of directors, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of the board of directors, subject only to any powers expressly reserved to the corporation's membership or other persons in the articles or bylaws.

NEW SECTION. Sec. 2402. STANDARDS OF CONDUCT FOR DIRECTORS. (1) Each director, when discharging the duties of a director, shall act:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the nonprofit corporation.

(2) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(3) In discharging the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements or other financial data, if prepared or presented by:

(a) One or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the matters presented;

(b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(i) Within the particular person's professional or expert competence; or

(ii) As to which the particular person merits confidence; or

(c) A committee of the board of which the director is not a member, designated in accordance with provisions of the articles or bylaws, as to matters within its designated authority, if the director reasonably believes the committee merits confidence.

(4) A director is not a trustee with respect to the nonprofit corporation or with respect to any property held or

administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

NEW SECTION. **Sec. 2403.** QUALIFICATION OF DIRECTORS. A director of a nonprofit corporation must be an individual. The articles or bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles or bylaws so prescribe.

NEW SECTION. **Sec. 2404.** NUMBER OF DIRECTORS. (1) A board of directors shall consist of one or more directors, with the number specified in or fixed in accordance with the articles or bylaws.

(2) The board of directors of any corporation shall consist of three or more directors if:

(a) The internal revenue service has determined the corporation to be a public charity described in section 509(a)(1) through (4) of the Internal Revenue Code;

(b) The corporation has applied to the internal revenue service for a determination of exempt status through an application representing that the corporation is described in section 509(a)(1) through (4) of the Internal Revenue Code; or

(c) The corporation has applied to the internal revenue service for classification as an organization described in section 509(a)(1) through (4) of the Internal Revenue Code.

(3) The number of directors on a board of directors who are under 18 years of age may not exceed three or one-third of the total number of directors then in office, whichever is fewer.

(4) A corporation described in subsection (2) of this section may have fewer than three directors if the death, incapacity, resignation, or removal of a director causes the corporation to have fewer than three directors, provided that the entity, body, or person with the power to elect or appoint directors makes reasonable and prompt efforts to elect or appoint additional directors.

(5) The number of directors may be increased or decreased but to no fewer than one from time to time by amendment to, or in the manner provided in, the articles or bylaws.

(6) A decrease in the number of directors may not shorten an incumbent director's term.

NEW SECTION. **Sec. 2405.** SELECTION OF DIRECTORS. (1) The members of a membership corporation shall elect the directors, other than the initial directors named in the articles, at the annual meetings of members, unless the articles or bylaws provide some other time or method of election, or provide that some other person or persons shall appoint some or all of the directors, or designate some other manner of appointment, for example, ex officio directors.

(2) The directors of a nonmembership corporation shall elect the directors, other than the initial directors named in the articles, at the annual meeting of directors, unless the articles or bylaws provide some other time or method of election, or provide that some other person or persons shall appoint some or all of the directors, or designate some other manner of appointment, for example, ex officio directors.

NEW SECTION. **Sec. 2406.** TERMS OF DIRECTORS, GENERALLY. (1) The articles or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, then the term of a director is one year. Each term of a director elected by the members or directors, or by some other method provided in the articles or bylaws, may not exceed five years except as provided in subsection (2) of this section. Terms of directors appointed by some other person or persons, or designated in some other manner, may be of any length.

(2) For a corporation formed before the effective date of this section, if the articles or bylaws current as of the effective date of this section provided for terms of elected directors longer than five years, then the terms for elected directors provided in those articles or bylaws may continue in effect until and unless the articles or bylaws are amended to shorten those terms.

(3) The initial directors named in the articles hold office until the first annual election of directors or for any other period specified in the articles.

(4) A reduction in directors' terms of office does not shorten an incumbent director's term.

(5) Except as provided in the articles or bylaws, the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.

(6) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office, unless otherwise provided in the articles or bylaws.

NEW SECTION. Sec. 2407. STAGGERED TERMS FOR DIRECTORS. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office and number of directors in each group do not need to be uniform.

NEW SECTION. Sec. 2408. RESIGNATION OF DIRECTOR. (1) A director may resign at any time by delivering an executed notice in the form of a record to the president, the secretary of the corporation, or another officer designated for that purpose in the articles or bylaws. A director may also resign by giving oral notice to the board at a meeting of the board.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective time.

(3) If the resignation of a director of a charitable corporation results in the charitable corporation having no directors in office, then the resigning director shall notify the attorney general that the charitable corporation has no directors in office. Such notice must be in the form of a record delivered to the attorney general within ten calendar days after the effective date of the director's resignation.

NEW SECTION. Sec. 2409. REMOVAL OF DIRECTORS. (1) Removal of directors of a membership corporation is subject to the following provisions:

(a) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(b) The board of a membership corporation may not remove a director who has been elected by the members except as

provided in subsection (5) of this section or in the articles or bylaws.

(c) The directors may remove, with or without cause, one or more directors who have been elected by the directors, unless the articles or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(d) Except as provided in the articles or bylaws, if a director is elected by a voting group of members, or by a chapter or other organizational unit, or by a region or other geographic grouping, then only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.

(e) The notice of a meeting of members at which removal of a director is to be considered shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(2) The board may remove a director of a nonmembership corporation who was elected by the directors:

(a) With or without cause, unless the articles or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(b) A nonprofit corporation shall give notice of any meeting of directors at which removal of a director is to be considered in accordance with the articles or bylaws governing notice for special meetings, but in no event less than forty-eight hours before the meeting. Such notice shall state that the purpose, or one of the purposes, of the meeting is removal of a director.

(c) As provided in subsection (5) of this section.

(3) A director who is designated by name in the articles or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(4) Except as provided in the articles or bylaws, a director who is appointed by persons other than the members or the directors may be removed with or without cause only by those persons.

(5) Notwithstanding anything else to the contrary in this section or the articles or bylaws, the board of a

membership corporation or nonmembership corporation may remove a director:

(a) Who has been appointed a guardian under RCW 11.130.185 or 11.130.265;

(b) Who has been appointed a conservator under RCW 11.130.360;

(c) Who is subject to a written certification by his or her attending physician that in the physician's opinion the director is substantially unable to manage his or her financial resources or resist fraud or undue influence;

(d) Who has been convicted of a felony;

(e) Who has been found by a final order of any court of competent jurisdiction to have breached a duty as a director under section 2402 of this act;

(f) Who has missed the number of board meetings specified in the articles or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or

(g) Who does not satisfy any of the qualifications for directors set forth in the articles or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(6) Notwithstanding anything else to the contrary in this section or the articles or bylaws, the board of a charitable corporation that is a membership corporation or a nonmembership corporation may remove a director if the director's continued service would cause the charitable corporation to be prohibited from soliciting charitable funds under RCW 19.09.100(13).

NEW SECTION. Sec. 2410. VACANCY ON BOARD OF DIRECTORS. (1) Except as provided in subsection (2) of this section, the articles, or the bylaws, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors, then the vacancy may be filled by a majority of the directors remaining in office even if they constitute less than a quorum. For purposes of section 2409 of this act, any director so elected is deemed to have been elected by the members, voting group, or persons who would elect that director at a regular election.

(2) Except as provided in the articles or bylaws, a vacancy in the position of a director who is:

(a) Appointed by persons other than the members, may be filled only by those persons; or

(b) Designated by name in the articles or bylaws, may not be filled by action of the board.

(3) A vacancy that will occur at a specific later time, by reason of a resignation effective at a later time under section 2408(2) of this act, or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

(4) If no directors remain in office, and there are no members with the right to elect directors, then the attorney general has the power to appoint one or more directors selected for their interest and ability to carry out the purposes of the corporation, unless the articles or bylaws provide a different method for electing, appointing, or designating at least one director.

NEW SECTION. Sec. 2411. LIABILITY OF DIRECTORS. (1) A director of a nonprofit corporation is not liable to the nonprofit corporation for any action taken, or any failure to take any action, as a director, except as provided in subsection (2) or (3) of this section or in the articles or bylaws.

(2) Notwithstanding any provision to the contrary in the articles or bylaws, a director is liable to the corporation for:

(a) The value of any benefit in cash, other property, or services received by the director to which the director is not legally entitled; or

(b) Intentional misconduct or a knowing violation of law, including but not limited to criminal law or this chapter, by the director.

(3) A director is liable to the corporation for a violation of any additional standard of conduct specified in the nonprofit corporation's articles as an exception to the limitation on director's liability.

(4) A director of a nonprofit corporation is not liable to any member of the nonprofit corporation for any action taken, or any failure to take

action, as a director, except as provided in subsection (5) of this section.

(5) A director is liable to a member of the corporation only for:

(a) A knowing infliction of harm upon the member; or

(b) An intentional violation of criminal law or this chapter that results in harm or loss to the member.

(6) The party seeking to establish the director's liability to the corporation or any member of the corporation:

(a) For money damages, also has the burden of establishing that:

(i) Harm to the nonprofit corporation or its members has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct; or

(b) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever burden of persuasion may be called for to establish that the payment sought is appropriate in the circumstances; or

(c) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever burden of persuasion may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(7) Nothing contained in this section:

(a) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under section 2703(1)(c) of this act, alters the burden of proving the fact or lack of fairness otherwise applicable;

(b) Alters the fact or lack of liability of a director to the nonprofit corporation under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section 2702 of this act, a conflicting interest transaction under section 2703 of this act, or taking advantage of a business opportunity under section 2704 of this act;

(c) Affects any rights to which the corporation or a director or member may be entitled under another statute of this state or the United States; or

(d) Affects the authority of the attorney general to take any action against a director under this chapter or other applicable Washington state law.

NEW SECTION. **Sec. 2412.** COMPENSATION OF DIRECTORS. Unless the articles or bylaws provide otherwise, the board may fix the compensation of directors.

ARTICLE 5

MEETINGS AND ACTION OF THE BOARD

NEW SECTION. **Sec. 2501.** MEETINGS OF THE BOARD. (1) The board may hold regular or special meetings in or out of this state.

(2) Unless the articles or bylaws provide otherwise, the board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, one or more means of remote communication through which all of the directors may simultaneously participate with each other during the meeting. A director participating in a meeting by this means is considered present in person at the meeting. For any meeting at which one or more directors may participate by means of remote communication, notice of the meeting must be delivered to each director by a means which the director has authorized and provide complete instructions for participating in the meeting by remote communication.

NEW SECTION. **Sec. 2502.** NOTICE OF BOARD MEETINGS. (1) Regular meetings of the board may be held with or without notice as prescribed in the articles or bylaws, unless notice is required by section 2409(2) of this act or other provisions of this chapter.

(2) Unless the articles or bylaws provide for a longer or shorter period, special meetings of the board must be preceded by at least forty-eight hours' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting, except as required by section 2409(2) of this act, other provisions of this chapter, or the articles or bylaws.

(3) Unless the articles or bylaws provide otherwise, the president, the secretary, or twenty percent of the directors then in office may call and give, or cause to be given, notice of a meeting of the board.

(4) Oral notice of meetings of the board may be given, unless oral notice is

not permitted by a corporation's articles or bylaws.

NEW SECTION. Sec. 2503. WAIVER OF NOTICE. (1) A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver must be in the form of a record, executed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting or promptly upon arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

NEW SECTION. Sec. 2504. BOARD QUORUM AND VOTING REQUIREMENTS. (1) Except as provided in subsection (2) or (3) of this section, the articles, or the bylaws, a quorum of the board consists of a majority of the directors in office before a meeting begins.

(2) The articles or bylaws may authorize a quorum of the board to consist of no fewer than one-third of the number of directors in office.

(3) A quorum shall not be present at any time during a meeting unless a majority of the directors present are at least 18 years of age.

(4) If a quorum is present when a vote is taken, then the affirmative vote of a majority of directors present is the act of the board unless a greater vote is required by the articles or bylaws or this chapter.

(5) No proxy for a director, however appointed, may:

(a) Participate in any vote of the board or of any board committee;

(b) Be counted for the purpose of determining whether a quorum is present at a meeting; or

(c) Execute any written consent on behalf of the director.

(6) A director who is present at a meeting of the board when corporate action is taken is considered to have assented to the action taken unless:

(a) The director objects at the beginning of the meeting or promptly upon arrival to holding it or transacting business at the meeting;

(b) The director dissents or abstains from the action; or

(c) The director delivers notice in the form of a record of the director's dissent or abstention to the president or secretary of the corporation or another officer of the corporation designated in the bylaws before or during the meeting or before the approval of the minutes of the meeting.

(7) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

NEW SECTION. Sec. 2505. ACTION WITHOUT MEETING BY UNANIMOUS WRITTEN CONSENT. (1) Unless the articles or bylaws prohibit action without a meeting, action required or permitted by this chapter to be taken by the board may be taken without a meeting if each director entitled to vote with respect to the subject matter thereof executes a consent in the form of a record describing the action to be taken and delivers it to the nonprofit corporation.

(2) For purposes of this section only, "each director entitled to vote" does not include an "interested director" who abstains in writing from providing consent, where:

(a) The board has determined that:

(i) The corporation is entering into the transaction for its own benefit; and

(ii) The transaction is fair and reasonable to the corporation when it enters into the transaction or the noninterested directors determine in good faith after reasonable investigation that the corporation cannot obtain a more advantageous arrangement with reasonable effort under the circumstances, at or before execution of the written consent;

(b) That determination of the board is included in the written consent executed by the noninterested directors or in other records of the corporation; and

(c) All of the noninterested directors approve the action.

(3) Action taken under this section is the act of the board when one or more consents executed by all the directors entitled to vote are delivered to the

nonprofit corporation. In no event may the period between the date of the first signature by a director on such a consent and the date on which all directors have executed the consent be more than sixty days. The consent may specify the time at which the action taken in the consent is to be effective. A director's consent may be withdrawn by a revocation in the form of a record executed by the director and delivered to the president, secretary, or other officer of the corporation specified by the board for that purpose before delivery to the corporation of unrevoked consents executed by all the directors.

(4) A written consent executed under this section has the effect of action taken at a meeting of the board and may be described as such in any document.

NEW SECTION. **Sec. 2506.** BOARD AND ADVISORY COMMITTEES. (1) Unless this chapter, the articles, or the bylaws provide otherwise, a board may create one or more committees of the board that consist of two or more directors. A committee of the board shall not include as voting members persons who are not directors, except:

(a) As provided in Title 48 RCW or the regulations promulgated thereunder;

(b) If the only powers delegated to the committee are those necessary for the committee to serve in any fiduciary capacity with respect to one or more employee benefit plans established under the federal employee retirement income security act of 1974, or any successor statute; or

(c) Unless without the inclusion of persons who are not directors it is impossible or impracticable for the corporation to comply with applicable law other than this chapter.

(2) Unless this chapter otherwise provides, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles or bylaws to take action under section 2504 of this act.

(3) Sections 2501 through 2505 of this act apply to both committees of the board and their members to the greatest practicable extent.

(4) To the extent specified by the board or in the articles or bylaws, each committee of the board may exercise the powers of the board granted through section 2401(2) of this act, except as limited by subsection (5) of this section.

(5) A committee of the board may not:

(a) Authorize distributions;

(b) Adopt, amend, alter, or repeal bylaws;

(c) In the case of a membership corporation, approve or propose to members action that must be approved by members under the articles or bylaws;

(d) Elect, appoint or remove any member of any committee of the board or any director or officer of the corporation;

(e) Amend the articles;

(f) Adopt a plan of merger with another corporation;

(g) Adopt a plan of domestication, for-profit conversion, or entity conversion;

(h) Authorize the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business;

(i) Authorize the voluntary dissolution of the corporation or revoke proceedings therefor;

(j) Adopt a plan for the distribution of the assets of the corporation; or

(k) Amend, alter, or repeal any resolution of the board, unless the resolution provides by its terms that it may be amended, altered, or repealed by a committee.

(6) The creation of, delegation of authority to, or action by a committee of the board does not alone constitute compliance by a director with the standards of conduct described in section 2402 of this act.

(7) A nonprofit corporation may create or authorize the creation of one or more advisory committees whose members need not be directors or meet the qualification requirements for directors. The board shall not delegate any of its authority to an advisory committee. An advisory committee:

(a) Is not a committee of the board; and

(b) May not exercise any of the powers of the board.

NEW SECTION. **Sec. 2507.** PROCEDURE FOR REMOTE MEETINGS. Unless otherwise provided in the articles or bylaws, meetings of the board or any committee held by remote communication must follow the provisions of sections 2501 through 2506 of this act to the greatest practicable extent.

ARTICLE 6

OFFICERS

NEW SECTION. **Sec. 2601.** OFFICERS—DUTIES. (1) The officers of a nonprofit corporation consist of a president, secretary, and treasurer, and other officers as may be authorized by the articles, the bylaws, or the board.

(2) Unless the articles or bylaws provide otherwise, the board shall elect or appoint all officers annually, and officers shall serve until their respective successors have been elected or appointed or until their earlier removal or resignation.

(3) The same individual may simultaneously hold more than one office in a nonprofit corporation, except that the same individual may not hold the offices of president and secretary.

(4) Each officer has the authority and shall perform the duties set forth in the articles or bylaws or, to the extent consistent with the articles and bylaws, the duties prescribed by the board or by direction of an officer authorized by the board to prescribe the duties of other officers.

NEW SECTION. **Sec. 2602.** STANDARDS OF CONDUCT FOR OFFICERS. (1) An officer with discretionary authority shall discharge his or her duties under that authority:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) The duty of an officer includes the obligation to convey to his or her

superior officer, the board, a board committee, or another appropriate person within the nonprofit corporation:

(a) Information about the affairs of the nonprofit corporation within the scope of the officer's functions, and known to the officer to be material to the superior officer, board, or committee thereof; and

(b) Information regarding any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, director, employee, agent, or vendor of the corporation, that the officer believes has occurred or is likely to occur.

(3) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the nonprofit corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(i) Within the particular person's professional or expert competence; or

(ii) As to which the particular person merits confidence.

(4) An officer is not a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

NEW SECTION. **Sec. 2603.** RESIGNATION AND REMOVAL OF OFFICERS. (1) An officer may resign at any time by delivering notice to the nonprofit corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, then the board or the appointing officer may designate a successor before the effective time if

the board or the appointing officer provides that the successor does not take office until the effective time.

(2) Except as provided in the articles or bylaws, an officer may be removed at any time with or without cause by:

(a) The board;

(b) The officer who appointed the officer being removed, unless the board provides otherwise; or

(c) Any other officer authorized by the articles, the bylaws, or the board to remove the officer being removed.

(3) In this section, "appointing officer" means the officer, including any successor to that officer who appointed the officer resigning or being removed.

NEW SECTION. **Sec. 2604.** CONTRACT RIGHTS OF OFFICERS. (1) The appointment or election of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

ARTICLE 7

PROVISIONS COMMON TO DIRECTORS AND OFFICERS

NEW SECTION. **Sec. 2701.** LOANS OR GUARANTEES. (1) A nonprofit corporation may not lend money to, advance credit to, or guarantee the obligation of a director or officer of the corporation.

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

(a) An advance to pay reimbursable expenses reasonably expected to be incurred within a time period that is reasonable under the circumstances by a director or officer;

(b) Advances pursuant to section 2706 of this act;

(c) Loans or advances pursuant to employee benefit plans; or

(d) A loan to pay reasonable relocation expenses of an officer.

(3) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(4) The directors who vote for or assent to any loan, advance, or guarantee in violation of subsection (1) of this section, and any officer materially participating in the making of such a loan, advance, or guarantee, are personally liable on a joint and several basis to the nonprofit corporation on the loan, advance, or guarantee. Liability under this subsection terminates upon the repayment of any funds advanced by the nonprofit corporation in violation of subsection (1) of this section or, if no funds have been advanced under a guarantee, upon the termination of the guarantee.

(5) A director or officer held liable under subsection (4) of this section for any unlawful loan or guarantee is entitled to contribution from every other director or officer who could be held liable under subsection (4) of this section for the unlawful loan or guarantee.

(6) A proceeding to enforce contribution or recoupment under subsection (5) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (4) of this section.

NEW SECTION. **Sec. 2702.** LIABILITY FOR UNLAWFUL DISTRIBUTIONS. (1) A director or officer is personally liable to the nonprofit corporation for the amount of any distribution that exceeds the amount the corporation could have distributed without violating section 1406 of this act if:

(a) The nature or amount of the distribution was material to the interests of the corporation for any reason under all of the facts and circumstances including, but not limited to, federal excise tax liability or federal tax penalties imposed on the corporation as a result of the distribution;

(b) The director or officer voted for or assented to that distribution as a director, or participated beyond the level of a ministerial function in making that distribution as an officer; and

(c) The party asserting liability establishes that, when taking the action, the director or officer violated the standard of conduct set forth in subsection (2) of this section.

(2) A director or officer may be held liable under this section:

(a) For a distribution by a charitable corporation, or a distribution of assets held for charitable purposes, if the director did not comply with section 2402 of this act or the officer did not comply with section 2602 of this act; or

(b) If the conduct of the director or officer with respect to the distribution constitutes gross negligence.

(3) A director or officer held liable under this section for an unlawful distribution is entitled to:

(a) Contribution from every other director or officer who could be held liable under this section for the unlawful distribution; and

(b) Recoupment from each person of the pro rata portion of the amount of the unlawful distribution the person received:

(i) Whether or not the person knew the distribution was made in violation of this chapter, for a distribution by a charitable corporation or of property held for charitable purposes; or

(ii) Knowing the distribution was made in violation of this chapter, for a distribution of property not held for charitable purposes.

(4) A proceeding to enforce:

(a) The liability of a director or officer under this section is barred, unless it is commenced within three years after the date on which the distribution was made; or

(b) Contribution or recoupment under subsection (3) of this section is barred, unless it is commenced within one year after the liability of the claimant under this section has been finally adjudicated.

NEW SECTION. Sec. 2703. CONFLICTING INTEREST TRANSACTIONS—VOIDABILITY. (1) A contract or transaction between a nonprofit corporation and one or more of its members, directors, or officers; or between a nonprofit corporation and any other entity in which one or more of its directors or officers are directors or officers, hold a similar position, or have a financial interest is not void or voidable solely for that reason, or solely because the member, director, or officer is present at or participates in

the meeting of the board that authorizes the contract or transaction or solely because his or her or their votes are counted for that purpose, if:

(a) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board and the board in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(b) The material facts as to the relationship or interest of the member, director, or officer and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or

(c) The contract or transaction is fair as to the corporation as of the time the board or the members authorize, approve, or ratify the transaction.

(2) Interested directors or directors holding a similar position in the other entity involved in a contract or transaction specified in subsection (1) of this section may be counted in determining the presence of a quorum at a meeting of the board that authorizes the contract or transaction.

(3) This section is applicable except as provided in the articles or bylaws.

NEW SECTION. Sec. 2704. BUSINESS OPPORTUNITIES. (1) The taking advantage, directly or indirectly, by a director or officer of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director or officer, in a proceeding by or in the right of the nonprofit corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated or entitled respecting the opportunity the director or officer brings it to the attention of the corporation and action by the members or the directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 2703 of this act, as if the decision being made concerned a conflicting interest transaction.

(2) In any proceeding seeking equitable relief or other remedies, based

upon an alleged improper taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection (1) of this section before taking advantage of the opportunity does not support an inference that the opportunity should have been first presented to the nonprofit corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

NEW SECTION. Sec. 2705. REMOVAL BY JUDICIAL PROCEEDING. (1) The court may remove a director or officer from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) The director or officer engaged in fraudulent conduct with respect to the corporation or its members, knowingly inflicted harm on the corporation, or engaged in acts or omissions constituting gross negligence with respect to the director's or officer's duties; and

(b) Considering the course of conduct of the director or officer and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(2) An action under this section may be commenced by a member, individual director, or delegate. The attorney general may also commence an action under this section if the corporation holds property for charitable purposes.

(3) The court, in addition to removing the director or officer, may bar the director or officer from being reelected, redesignated, or reappointed as a director, an officer, or both for a period prescribed by the court.

(4) Nothing in this section limits the equitable powers of the court to order other relief.

(5) If a proceeding is commenced under this section to remove a director or officer of a charitable corporation, then the plaintiff shall give the attorney general notice in the form of a record of the commencement of the proceeding.

NEW SECTION. Sec. 2706. INDEMNIFICATION AND ADVANCE FOR EXPENSES. The provisions of RCW 23B.08.500 through 23B.08.603, or their successors, apply to any corporation to

which this chapter applies. For purposes of this chapter:

(1) All references in those provisions to shares of a corporation are deemed to refer to membership interests in the nonprofit corporation.

(2) All references in those provisions to shareholders are deemed to refer to members of the nonprofit corporation.

(3) All references in those provisions to a shareholders meeting are deemed to refer to a meeting of the members of the nonprofit corporation.

(4) All references in those provisions to transactions from which directors or officers will personally receive a benefit to which they are not entitled are deemed to include transactions approved or implemented by a director or officer knowing them to be in violation of section 1406 of this act.

(5) This section does not limit a nonprofit corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

NEW SECTION. Sec. 2707. DIRECTORS AND OFFICERS UNDER 18 YEARS OF AGE. No director or officer of a corporation who is under 18 years of age shall have authority to execute any document on behalf of the corporation, or otherwise to bind the corporation with respect to any other party, without the written concurrence of one or more other directors or officers of the corporation who are at least 18 years of age and would, between them, have independent authority to execute the same document or to bind the corporation in the same way.

PART III

FUNDAMENTAL TRANSACTIONS

ARTICLE 1

AMENDMENT OF ARTICLES OR BYLAWS

NEW SECTION. Sec. 3101. AUTHORITY TO AMEND. (1) A nonprofit corporation may amend its articles of incorporation, from time to time, so long as its articles as amended contain only provisions that are lawful under this chapter.

(2) Amendments to the articles of a charitable corporation to include one or more purposes of the corporation substantially different from the corporation's purposes before the amendment are subject to the reporting

requirement set out in section 1205 of this act.

NEW SECTION. Sec. 3102. AMENDMENT OF ARTICLES BY NONMEMBERSHIP CORPORATION.

(1) Except as provided in the articles, the board of a nonmembership corporation may adopt amendments to the corporation's articles by the vote of a majority of the directors in office.

(2) Except as provided in subsection (3) of this section, an amendment adopted by the board under this subsection must also be approved, if the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group.

(3) Unless the articles provide otherwise, the board of a nonmembership corporation may adopt amendments to the corporation's articles without approval of any of the other persons identified in subsection (2) of this section to:

(a) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) Delete the names and addresses of the initial directors;

(c) Notwithstanding section 1303(1) of this act, delete the name of each incorporator and the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; and

(d) Restate without change all of the then operative provisions of the articles.

NEW SECTION. Sec. 3103. AMENDMENT BEFORE ADMISSION OF MEMBERS. If a membership corporation has not yet admitted members, then its board may adopt one or more amendments to the articles.

NEW SECTION. Sec. 3104. AMENDMENT AFTER ADMISSION OF MEMBERS. (1) An amendment to the articles of a membership corporation must be adopted in the following manner:

(a) Except as provided in (e) of this subsection, a proposed amendment must be adopted by the board.

(b) Except as provided in sections 3107 and 3108 of this act, a proposed amendment must be submitted to the

members entitled to vote on the amendment, if any, for their approval.

(c) The board shall deliver to all members a recommendation that the members approve an amendment, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(d) The board may condition its submission of an amendment to the members on any basis. Such a condition is in addition to any approval requirements set forth in the corporation's articles or bylaws or in this chapter.

(e) If the articles or bylaws so permit, an amendment may be proposed by ten percent or more of the members entitled to vote on the amendment, or by a greater number of members if the articles or bylaws so specify. The provisions of (a), (c), and (d) of this subsection do not apply to an amendment proposed by the members under this subsection.

(f) If an amendment is required to be approved by the members, including under (e) of this subsection, and the approval is to be given at a meeting, then the corporation shall give notice to each member, whether or not entitled to vote on the amendment, of the meeting of members at which the amendment is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy or summary of the amendment. If a summary is provided in lieu of a copy of the amendment, then a copy must be available to members upon request and the notice shall state that fact.

(g) At a meeting described in (f) of this subsection, those members entitled to vote on the amendment may:

(i) Approve or reject the amendment exactly as provided or summarized in the notice of the meeting; or

(ii) Approve revisions to the amendment at the meeting, if the subject matter of the revisions is within the scope of the subject matter of the amendment as provided or summarized in the notice of the meeting.

(h) The board shall determine whether the subject matter of any revisions approved by members remains within the scope of the subject matter of the amendment as provided or summarized in the notice of the meeting. If the board determines that the revisions approved by the members are not within that scope, then the amendment is deemed rejected by the membership. If the board determines that the revisions by members are within scope, then the board may:

(i) Accept the amendment incorporating the revisions approved by the members; or

(ii) Propose a further revised amendment to the members for approval.

This process may continue until an amendment acceptable to the board has been approved by the members. If successive votes take place at the same meeting of members, then no further notices or meetings are required.

(i) Unless the articles or bylaws, or the board acting pursuant to (d) of this subsection, requires a greater vote or a greater number of votes to be present, the approval of an amendment by the members entitled to vote thereon requires the approval of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the amendment, the approval of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(j) Except as provided in subsection (2) of this section, an amendment adopted by the board under this subsection must also be approved, if the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group.

(k) If a membership corporation has no members entitled to vote on the amendment, then the corporation shall deliver notice of the approval of the amendment by the board to all members of the corporation at least five days before filing articles of amendment or restated articles of incorporation with the secretary of state.

(2) Unless the articles provide otherwise, the board of a membership corporation may adopt amendments to the corporation's articles without approval of the members to:

(a) Delete the names and addresses of the initial directors;

(b) Notwithstanding section 1303(2) of this act, delete the name of each incorporator and the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; or

(c) Restate without change all of the then operative provisions of the articles.

NEW SECTION. **Sec. 3105.** VOTING ON AMENDMENTS BY VOTING GROUPS. (1) If a nonprofit corporation has more than one class of members entitled to vote on an amendment to the articles, then the articles or bylaws may provide that the members of each class entitled to vote on the amendment are entitled to vote as a separate voting group if the amendment would change the rights, powers, preferences, or limitations of the class.

(2) If a class of members will be divided into two or more classes by an amendment to the articles, then the amendment must be approved by a majority of the members of each class that will be created.

NEW SECTION. **Sec. 3106.** ARTICLES OF AMENDMENT. After an amendment to the articles has been adopted and approved in the manner required by sections 3101 through 3114 of this act and by the articles, the nonprofit corporation shall deliver to the secretary of state for filing articles of amendment, which must be executed by an officer or other authorized representative and set forth:

- (1) The name of the corporation;
- (2) The text of the amendment adopted;
- (3) The date of the amendment's adoption; and
- (4) If the amendment:
 - (a) Was adopted by the board without member approval, a statement that the amendment was adopted by the board of directors, and that member approval was not required; or
 - (b) Required approval by the members, a statement that the amendment was approved by the members in the manner required by this chapter and by the articles and bylaws.

NEW SECTION. **Sec. 3107.** RESTATED ARTICLES OF INCORPORATION. (1) The board

of a nonprofit corporation may restate its articles of incorporation at any time, without approval by the members or any other person, to consolidate all amendments into a single document without substantive change.

(2) A restatement of the articles may include one or more amendments to the articles. If restated articles of incorporation of a nonmembership corporation include one or more new amendments, then these amendments must have been adopted and approved as provided in section 3102 of this act. If restated articles of incorporation of a membership corporation include one or more new amendments that require member approval, then the amendments must have been adopted and approved as provided in section 3103 or 3104 of this act, as appropriate.

(3) A nonprofit corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the nonprofit corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include any amendments to the articles, a statement of that fact;

(b) If the restatement contains one or more amendments to the articles, the information required by section 3106 (1) through (4) of this act.

(4) The articles of restatement and the certificate must be executed by an officer or other authorized representative.

(5) Duly adopted restated articles of incorporation supersede the original articles and all amendments thereto.

(6) The secretary of state shall certify restated articles of incorporation as the articles currently in effect.

NEW SECTION. Sec. 3108. AMENDMENT OF ARTICLES PURSUANT TO REORGANIZATION. (1) A nonprofit corporation's articles of incorporation may be amended without action by the board or the members to carry out a plan of reorganization ordered or decreed by any court of competent jurisdiction in a proceeding relating to the corporation.

(2) An individual designated by the court shall deliver to the secretary of

state for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

NEW SECTION. Sec. 3109. EFFECTIVE DATE. Unless a delayed effective date is specified, articles of amendment or restated articles of incorporation become effective on the date the articles of amendment or restated articles of incorporation are filed by the secretary of state.

NEW SECTION. Sec. 3110. EFFECT OF ARTICLES OF AMENDMENT. (1) Except as provided in subsection (2) of this section, an amendment to the articles does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation or persons referred to in the articles. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

(2) No amendment to the articles shall modify any restriction imposed through any means upon property held for charitable purposes unless, before the delivery of the amendment to the secretary of state for filing, the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the

attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(3) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the articles unless the person is itself a charitable corporation, the federal government, a state, a governmental subdivision, or an unincorporated entity that has charitable purposes. This subsection does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. Sec. 3111. POWER TO AMEND BYLAWS. The power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the board unless otherwise provided in the articles, the bylaws, or this chapter.

NEW SECTION. Sec. 3112. BYLAW AMENDMENTS REQUIRING MEMBER APPROVAL. (1) Except as provided in the articles or bylaws, the board of a membership corporation that has one or more members may not, without approval of the class or classes of members affected, adopt or amend a provision of the bylaws:

(a) That would eliminate any existing right, power, or privilege of membership contained in the bylaws;

(b) Under section 2107 of this act, providing that some of the members have different rights or obligations than other members with respect to voting, dissolution, transfer of memberships or other matters;

(c) Under section 2110 of this act, levying dues, assessments, or fees on some or all of the members;

(d) Under section 2113 of this act, relating to the termination or suspension of members; or

(e) Under section 2114 of this act, authorizing the purchase of memberships.

(2) The board of a membership corporation that has members may not amend the articles or bylaws without approval of every class or classes of members affected to vary the application of subsection (1) of this section to the corporation.

(3) If a nonprofit corporation has more than one class of members, then the members of a class are entitled to vote as a separate voting group on an amendment to the bylaws that:

(a) Is described in subsection (1) of this section, if the amendment would affect the members of that class differently than the members of another class; or

(b) Has any of the effects described in section 3104(1)(j) of this act.

(4) If a class of members will be divided into two or more classes by an amendment to the bylaws, then the amendment must be approved by a majority of the members of each class that will be created.

NEW SECTION. Sec. 3113. EFFECT OF BYLAW AMENDMENT. (1) No amendment to the bylaws shall modify any restriction imposed through any means upon property held for charitable purposes unless, before or simultaneously with the adoption of the bylaws amendment, the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(2) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the bylaws unless the person is itself a charitable corporation, the federal government, a state, a governmental subdivision, or an unincorporated entity that has charitable purposes. This subsection does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. Sec. 3114. APPROVAL OF AMENDMENTS BY THIRD PARTIES. (1) The articles of incorporation may require that an amendment to the articles be approved in the form of a record by a specified person or group of persons in addition to the board or members.

(2) The articles or bylaws may require that an amendment to the bylaws be approved in the form of a record by a specified person or group of persons in addition to the board or members.

(3) A requirement in the articles or bylaws described in subsection (1) or (2) of this section may only be amended with the approval in the form of a record of the specified person or group of persons.

ARTICLE 2

MERGER

NEW SECTION. Sec. 3201. DEFINITIONS. The definitions in this section apply throughout this section and sections 3202 through 3209 of this act unless the context clearly requires otherwise.

(1) "Eligible interests" means interests or shares.

(2) "Interests" means either or both of the following rights under the organic law of an unincorporated entity:

(a) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(b) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.

(3) "Merger" means a transaction pursuant to section 3205 of this act.

(4) "Party to a merger" means any domestic or foreign nonprofit corporation or eligible entity that will merge under a plan of merger.

(5) "Shares" means the units into which the proprietary interests in a domestic or foreign for-profit corporation are divided.

(6) "Survivor" in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

NEW SECTION. Sec. 3202. PROPERTY HELD FOR CHARITABLE PURPOSES. (1) In a merger under sections 3201 through 3209 of this act, property held for charitable purposes by a nonprofit corporation may not be diverted from charitable purposes.

(2) The survivor of any merger under sections 3201 through 3209 of this act remains bound by any restriction imposed

through any means upon property held for charitable purposes by any party to the merger including, but not limited to, any restriction that affects existing rights of persons other than members, shareholders, or interest holders of the other party, unless the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(3) Property held by a nonprofit corporation for charitable purposes upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, must be returned, transferred, or conveyed in accordance with that condition.

(4) A corporation that is not a charitable corporation but holds property for charitable purposes shall deliver to the attorney general notice of its intent to consummate a merger, unless the survivor of the merger is a charitable corporation. The notice must be delivered to the attorney general in the form of a record at least twenty days before the meeting at which the proposed transaction is to be approved. Such a merger may not be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the transaction, approval of the transaction is deemed to have been given.

(5) The notice described in subsection (4) of this section shall include:

(a) A statement specifying how the merger will comply with subsections (1) through (3) of this section; and

(b) A brief description of:

(i) Real property held by the corporation for charitable purposes, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held by the corporation for charitable purposes, and their approximate total fair market value;

(iii) Other personal property held by the corporation for charitable purposes, and its nature and approximate total fair market value; and

(iv) All gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

NEW SECTION. Sec. 3203. PROHIBITION OF FINANCIAL BENEFIT. A person who is a member, director, officer, interest holder, or otherwise affiliated with a charitable corporation or any other eligible entity with a charitable purpose may not receive a direct or indirect financial benefit in connection with a merger governed by sections 3201 through 3209 of this act to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation, the federal government, a tribal government, a state or local government, a governmental subdivision, or an eligible entity that is organized exclusively for charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. Sec. 3204. LIMITATIONS ON CHARITABLE CORPORATIONS. (1) A charitable corporation may merge only with:

(a) Another charitable corporation;

(b) A foreign corporation that, if it were a domestic corporation, would qualify under this chapter as a charitable corporation; or

(c) A foreign or domestic for-profit or nonprofit corporation, or unincorporated entity, only if the charitable corporation is the surviving corporation and continues to qualify as a charitable corporation after the merger.

(2) No member of a charitable corporation may receive or keep anything as a result of a merger other than a membership in the surviving charitable corporation, unless:

(a) The attorney general, or the court in a proceeding in which the attorney general has been given notice, has provided prior written consent; or

(b) The member is a charitable corporation, another entity that is organized and operated exclusively for one or more charitable purposes, the federal government, or a tribal, state, or local government.

NEW SECTION. Sec. 3205. MERGER. (1) Subject to the restrictions in sections 3202 through 3204 of this act, one or more domestic nonprofit corporations may merge with one or more domestic or foreign nonprofit corporations or eligible entities pursuant to a plan of merger or two or more foreign nonprofit corporations or domestic or foreign eligible entities may merge into a new domestic nonprofit corporation to be created in the merger in the manner provided in sections 3201 through 3209 of this act.

(2) A foreign nonprofit corporation, or a foreign eligible entity, may be a party to a merger with a domestic nonprofit corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the organic law of the corporation or eligible entity.

(3) If the law of this state, other than this chapter, permits the merger of a domestic eligible entity with a nonprofit corporation but does not provide procedures for the approval of such a merger, then a plan of merger may be adopted and approved, and the merger may be effectuated, in accordance with the procedures in sections 3201 through 3209 of this act. For the purposes of applying sections 3201 through 3209 of this act, as the context may require:

(a) The eligible entity is treated as a domestic nonprofit corporation, its interest holders are treated as members, eligible interests are treated as memberships, and organic records are treated as articles and bylaws; and

(b) If there is no board of directors and the business and affairs of the eligible entity are managed by a team or body of persons that is not identical to the interest holders, that team or body is deemed to be the board of directors.

(4) The plan of merger must be in the form of a record and include:

(a) The name of each domestic or foreign nonprofit corporation or eligible entity that will merge and the name of the domestic or foreign nonprofit corporation or eligible entity that will be the survivor of the merger;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the memberships of each merging domestic or foreign nonprofit membership corporation and the eligible interests of each merging domestic or foreign eligible entity into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

(d) The articles and bylaws of any corporation, or the organic records of any eligible entity, to be created by the merger; or if a new corporation or eligible entity is not to be created by the merger, any changes to the survivor's articles or bylaws or organic records;

(e) Whether the corporation is a charitable corporation or is holding assets for charitable purposes;

(f) If the corporation is a charitable corporation or is holding assets for charitable purposes, a plan setting forth how the merging entities will comply with sections 3202 and 3204 of this act; and

(g) Any other provisions relating to the merger that the parties desire be included in the plan of merger.

(5) The plan of merger may also include a provision that the plan may be amended before filing articles of merger, but if the members of a domestic corporation that is a party to the merger are required or entitled to vote on the plan, then the plan shall provide that after approval of the plan by those members the plan may not be amended to change:

(a) The amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be received by the members of or owners of eligible interests in any party to the merger;

(b) The articles or bylaws of any corporation, or the organic records of

any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by section 3104(2) of this act or by comparable provisions of the organic law of a foreign nonprofit or for-profit corporation or domestic or foreign unincorporated entity; or

(c) Any of the other terms or conditions of the plan, if the change would adversely affect those members in any material respect.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

NEW SECTION. **Sec. 3206.** ADOPTION OF PLAN OF MERGER. In the case of a nonprofit corporation that is a party to a merger:

(1) The plan of merger must be adopted by the board.

(2) Except as provided in subsection (9) of this section, section 3205 of this act, or the articles or bylaws, after adopting the plan of merger, the board shall submit the plan to those members entitled to vote on the plan for their approval. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(3) The board may condition its submission of the plan of merger to the members on any basis.

(4) If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, then the nonprofit corporation shall give notice to each member, whether or not entitled to vote on the merger, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, then the notice shall also include a copy or summary of the articles and bylaws or organic records of that corporation or eligible entity. If the

corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, then the notice shall include a copy or a summary of the articles and bylaws or organic records of the new corporation or eligible entity. If a summary is provided in lieu of a copy of the plan or of the articles and bylaws, then a copy of the plan and articles and bylaws, as applicable, must be available to members upon request and this fact must be stated in the notice. Such copy of the plan and articles and bylaws, as applicable, may be made available in electronic format.

(5) Unless the articles or bylaws, or the board acting pursuant to subsection (3) of this section, requires a greater vote or a greater number of votes to be present, the approval of the plan of merger by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of merger, the approval of a majority of the members of each voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(6) Separate voting on a plan of merger is required:

(a) By each class of members:

(i) Whose memberships are to be converted into eligible interests, securities, or obligations; rights to acquire eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

(ii) Which is to experience a change in the rights, powers, preferences, or limitations of the class as a result of the merger; or

(iii) That would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under the articles or bylaws.

(b) By a voting group, if the voting group is entitled under the articles or bylaws to vote as a voting group to approve a plan of merger.

(7) If a plan of merger would affect in the same or a substantially similar way two or more classes of members entitled to vote separately on the plan

of merger under subsection (6) (a) of this section, then, instead of voting separately, all similarly affected classes of members shall vote together as a single voting group on the plan of merger, unless otherwise provided in the articles or as a condition imposed by the board under subsection (3) of this section.

(8) If as a result of a merger one or more members of a domestic nonprofit corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, then approval of the plan of merger requires the execution, by each member who would become subject to owner liability, of a separate record consenting to become subject to owner liability.

(9) If a domestic nonprofit corporation that is a party to a merger does not have any members entitled to vote on the merger, then a plan of merger is deemed adopted by the corporation when it has been adopted by the board pursuant to subsection (1) of this section. If a membership corporation has no members entitled to vote on the merger, then the corporation shall deliver notice of the proposed merger to all members of the corporation at least five days before the meeting at which the board is to adopt the plan of merger.

(10) In addition to the adoption and approval of the plan of merger by the board and members as required by this section, the plan of merger must also be approved in the form of a record by any person or group of persons whose approval is required under section 3114 of this act to amend the articles or bylaws.

(11) Adoption and approval of a plan of merger by all required persons under the procedures set forth in this section constitutes adoption and approval of all changes to the approving party's articles, bylaws, or other organic documents contained within the plan of merger.

NEW SECTION. Sec. 3207. ARTICLES OF MERGER. (1) After a plan of merger has been adopted and approved as required by sections 3201 through 3209 of this act, articles of merger must be executed on behalf of each party to the merger by an officer or other authorized representative of the party. The articles of merger shall set forth:

(a) The names of the parties to the merger;

(b) If the articles of the surviving domestic nonprofit corporation are being changed, or if a new domestic nonprofit corporation is created as a result of a merger, the changes to the articles of the surviving corporation or the articles of the new corporation;

(c) If the plan of merger required approval by the members of a domestic nonprofit corporation that was a party to the merger, a statement that the plan was approved by the members and, if voting by any separate voting group was required, by each separate voting group entitled to vote, in the manner required by this chapter and the articles or bylaws;

(d) If the plan of merger did not require approval by the members of a domestic nonprofit corporation that was a party to the merger, a statement to that effect;

(e) If a party to the merger is a noncharitable corporation holding property for charitable purposes, and the survivor is not a charitable corporation, a statement that the attorney general has approved, or is deemed to have approved, the merger pursuant to section 3202 of this act; and

(f) As to each foreign nonprofit corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was authorized as required by the organic law of the corporation or eligible entity.

(2) Terms of articles of merger may be made dependent on facts objectively ascertainable outside the articles in accordance with section 1202(3) of this act.

(3) Articles of merger must be delivered to the secretary of state for filing by the surviving entity of the merger and shall take effect at the effective time provided in RCW 23.95.210. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

NEW SECTION. Sec. 3208. EFFECT OF MERGER. (1) Subject to sections 3202 and 3203 of this act, if the surviving

entity is a domestic nonprofit corporation when a merger becomes effective:

(a) The domestic nonprofit corporation that is designated in the plan of merger as the surviving corporation continues or comes into existence, as the case may be;

(b) The separate existence of every domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor ceases;

(c) All property owned by, and every contract and other right possessed by, each domestic or foreign nonprofit corporation or eligible entity that merges into the surviving corporation is vested in the surviving corporation without reversion or impairment;

(d) All liabilities of each domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor are vested in the surviving corporation;

(e) The name of the surviving corporation may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) The articles and bylaws or organic records of the surviving corporation are amended to the extent of the changes provided in the plan of merger;

(g) The articles and bylaws of a surviving corporation that is created by the merger become effective; and

(h) The memberships of each corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; are converted.

(2) A person who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger has owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger, except to the extent that the person

consented to become subject to liability under section 3206(8) of this act.

(3) The effect of a merger on the owner liability of a person who had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger is as follows:

(a) The merger does not discharge any owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder to the extent that owner liability arose before the effective time of the articles of merger.

(b) The person does not have owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder before the merger for any debt, obligation, or liability that arises after the effective time of the articles of merger.

(c) The provisions of the organic law of any entity for which the person had owner liability before the merger continue to apply to the collection or discharge of any owner liability preserved by subsection (1) of this section, as if the merger had not occurred.

(d) The person has whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by (a) of this subsection, as if the merger had not occurred.

(4) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a merger, to or for any of the parties to the merger, inures to the survivor, subject to the express terms of the will or other instrument.

NEW SECTION. Sec. 3209. ABANDONMENT OF MERGER. (1) Unless otherwise provided in a plan of merger or in the organic law of a foreign nonprofit corporation or a domestic or foreign eligible entity that is a party to a merger, after the plan has been adopted and approved as required by sections 3201 through 3209 of this act, and at any time before the merger has become effective, it may be abandoned by a domestic nonprofit corporation that is a party thereto without action by its members, in accordance with any procedures set forth in the plan of merger or, if no procedures are set forth in the plan, in

the manner determined by the board, subject to any contractual rights of other parties to the merger.

(2) If a merger is abandoned under subsection (1) of this section after articles of merger have been filed by the secretary of state but before the merger has become effective, then a statement that the merger has been abandoned in accordance with this section, executed on behalf of a party to the merger by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the merger. Upon filing by the secretary of state, the statement takes effect and the merger is deemed abandoned and shall not become effective.

ARTICLE 3

DOMESTICATION AND CONVERSION

NEW SECTION. Sec. 3301. DEFINITIONS. The definitions in this section apply throughout this section and sections 3302 through 3326 of this act unless the context clearly requires otherwise.

(1) "Conversion" means a transaction authorized by section 3312, 3317, or 3321 of this act.

(2) "Converting corporation" means the domestic or foreign nonprofit or for-profit corporation that approves a conversion pursuant to sections 3301 through 3326 of this act or its organic law.

(3) "Converting entity" means the domestic or foreign entity that approves a conversion pursuant to section 3321 of this act or its organic law.

(4) "Domesticated corporation" means the domesticating corporation as it continues in existence after a domestication.

(5) "Domesticating corporation" means the domestic nonprofit corporation that adopts a plan of domestication pursuant to section 3308 of this act or the foreign nonprofit corporation that approves a domestication pursuant to its organic law.

(6) "Domestication" means a transaction authorized by section 3307 of this act.

(7) "Surviving corporation" means the corporation as it continues in existence immediately after consummation of a for-profit conversion pursuant to section 3312 of this act, a foreign for-profit

conversion and domestication pursuant to section 3317 of this act, or an entity conversion pursuant to section 3321 of this act.

(8) "Surviving entity" means the unincorporated entity as it continues in existence immediately after consummation of an entity conversion pursuant to section 3321 of this act.

NEW SECTION. **Sec. 3302.** EXCLUDED TRANSACTIONS. Sections 3301 through 3326 of this act may not be used to effect a transaction that:

(1) Converts a nonprofit or mutual insurance company to a for-profit stock corporation; or

(2) Is governed by chapter 70.45 RCW.

NEW SECTION. **Sec. 3303.** REQUIRED APPROVALS. If a domestic or foreign nonprofit corporation or eligible entity may not be a party to a merger or sale of its assets without the approval of a federal or state agency other than the secretary of state, then the corporation or eligible entity shall not be a party to a transaction under sections 3301 through 3326 of this act without the prior approval of that agency.

NEW SECTION. **Sec. 3304.** PROPERTY HELD FOR CHARITABLE PURPOSES. (1) In any transaction under sections 3301 through 3326 of this act, property held for charitable purposes by a nonprofit corporation may not be diverted from charitable purposes.

(2) No transaction under sections 3301 through 3326 of this act shall modify any restriction imposed through any means upon property held for charitable purposes by any entity involved in the transaction, including but not limited to a restriction that affects existing rights of persons other than members, shareholders, or interest holders of the entity, unless the restriction is modified:

(a) In the case of a restriction imposed pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary, through an appropriate order of the court or the agreement of all interested parties, including the attorney general, under chapter 11.96A RCW; or

(b) In the case of any other restriction, pursuant to section 1503 of this act.

(3) Property held by a nonprofit corporation for charitable purposes upon condition requiring return, transfer or conveyance, which condition occurs by reason of a transaction under sections 3301 through 3326 of this act, must be returned, transferred, or conveyed in accordance with that condition.

(4) A corporation holding property for charitable purposes shall deliver to the attorney general notice of its intent to consummate any transaction under sections 3301 through 3326 of this act. The notice must be delivered to the attorney general in the form of a record at least forty-five days before the meeting at which the proposed transaction is to be approved. Such a transaction may not be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the transaction, approval of the transaction is deemed to have been given.

(5) The notice described in subsection (4) of this section shall include:

(a) A statement specifying how the transaction will comply with subsections (1) through (3) of this section, as applicable; and

(b) A brief description of:

(i) Real property held for charitable purposes by the corporation, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held for charitable purposes by the corporation, and their approximate total fair market value;

(iii) Other personal property held for charitable purposes by the corporation, and its nature and approximate total fair market value; and

(iv) Any gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

(6) An event of domestication or conversion does not affect the applicability of chapter 11.110, 19.09, or 24.55 RCW to any entity.

NEW SECTION. **Sec. 3305.** PROHIBITION ON FINANCIAL BENEFIT. A person who is a member, interest holder, or otherwise affiliated with a charitable corporation or an unincorporated entity with charitable purposes may not receive a direct or indirect financial benefit in connection with a transaction governed by sections 3301 through 3326 of this act to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation, the federal government, a tribal, state, or local government, a governmental subdivision, or an unincorporated entity that has charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. **Sec. 3306.** VOTING RIGHTS IN EXISTING CORPORATIONS. For any corporation formed before January 1, 2022, any member or other person who is entitled under the articles or bylaws to vote on or approve a merger transaction involving the corporation is deemed entitled, to the same extent, to vote on or approve any transaction under sections 3301 through 3326 of this act involving the corporation.

NEW SECTION. **Sec. 3307.** DOMESTICATION. (1) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the law of the foreign jurisdiction allows the domestication.

(2) A domestic nonprofit corporation may become a foreign nonprofit corporation if the law of the foreign jurisdiction allows the domestication.

(3) Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the corporation's adoption of a plan of domestication in the manner provided in sections 3301 through 3326 of this act.

(4) The plan of domestication shall include:

(a) A statement of the jurisdiction in which the corporation is to be domesticated;

(b) The terms and conditions of the domestication;

(c) The manner and basis of canceling or reclassifying the memberships of the corporation following its domestication into memberships, obligations, rights to

acquire memberships, cash, other property, or any combination of the foregoing;

(d) If the corporation is a charitable corporation or is holding assets for charitable purposes, a plan setting forth how the corporation will comply with section 3304 (1) through (3) of this act; and

(e) Any desired changes to the articles or bylaws of the corporation in connection with its domestication.

(5) The plan of domestication may also include a provision that the plan may be amended before filing the document required by the laws of this state or the other jurisdiction to consummate the domestication; except that, after approval of the plan by the members, the plan may not be amended without the approval of the members entitled to vote thereon to change:

(a) The amount or kind of memberships, obligations, rights to acquire memberships, cash, or other property to be received by the members under the plan;

(b) The articles as they will be in effect immediately following the domestication, except for changes permitted by section 3104 of this act or by comparable provisions of the laws of the other jurisdiction; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(6) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

(7) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic nonprofit corporation before January 1, 2022, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, then the provision is deemed to apply to a domestication of the corporation until the provision is amended after that date.

NEW SECTION. **Sec. 3308.** ACTION ON A PLAN OF DOMESTICATION. In the case of a

domestication of a domestic nonprofit corporation in a foreign jurisdiction:

(1) The plan of domestication must be adopted by the board.

(2) If there are no members entitled to vote on the plan, then the plan must be adopted by a vote of the majority of directors then in office. If a membership corporation has no members entitled to vote on the plan, then the corporation shall deliver notice of the proposed domestication to all members of the corporation at least ten days before the meeting at which the board is to adopt the plan.

(3) After adopting the plan of domestication, the board shall submit the plan to the members for their approval, if there are members entitled to vote on the plan. The board shall also transmit to the members a recommendation that the members approve the plan, unless the board determines that, because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board shall transmit to the members the basis for that determination.

(4) The board may condition its submission of the plan of domestication to the members on any basis.

(5) If the approval of the members is to be given at a meeting, then the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan of domestication is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include a copy of the articles and bylaws as they will be in effect immediately after the domestication. If a summary is provided in lieu of a copy of the plan, then a copy of the plan must be available to members upon request and this fact must be stated in the notice.

(6) Unless the articles or bylaws, or the board acting pursuant to subsection (4) of this section, requires a greater vote or a greater number of votes to be present, the approval of the plan of domestication by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan, the

approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(7) A separate voting by voting groups is required by each class of members that:

(a) Is to be reclassified under the plan of domestication into a different class of members, or into obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing;

(b) Would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 3105 of this act; or

(c) Is entitled under the articles or bylaws to vote as a voting group to approve an amendment of the articles.

(8) If any provision of the articles, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2022, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, then the provision is deemed to apply to a domestication of the corporation until the provision is later amended.

NEW SECTION. **Sec. 3309.** ARTICLES OF DOMESTICATION. (1) Articles of domestication must be executed on behalf of the domesticating corporation by an officer or other authorized representative. The articles shall set forth:

(a) The name and jurisdiction of incorporation of the domesticating corporation;

(b) The name and jurisdiction of incorporation of the domesticated entity; and

(c) If the domesticating corporation is a domestic nonprofit corporation, a statement that the plan of domestication was approved in accordance with sections 3301 through 3326 of this act or, if the domesticating corporation is a foreign nonprofit corporation, a statement that the domestication was approved in accordance with the law of its jurisdiction of incorporation.

(2) The articles of domestication must be delivered to the secretary of state for filing, and take effect at the effective time provided in RCW 23.95.210.

(3) If the domesticating corporation is a foreign corporation, then the domesticating corporation must, simultaneously with the delivery of the articles of domestication, deliver articles of incorporation that comply with this title to the secretary of state for filing and the secretary of state shall file the articles. Provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the corporation must be included and the name of the corporation must satisfy the requirements of section 1302 of this act.

(4) If the domesticating corporation is a registered foreign corporation, then its registration is terminated automatically on the effective date of its domestication, and the secretary of state shall record the termination of the registration.

NEW SECTION. Sec. 3310. EFFECT OF DOMESTICATION. (1) Except as provided in section 3304 of this act, when a domestication becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the domesticating corporation remains in the domesticated corporation without reversion or impairment;

(b) The liabilities of the domesticating corporation remain the liabilities of the domesticated corporation;

(c) An action or proceeding pending against the domesticating corporation continues against the domesticated corporation as if the domestication had not occurred;

(d) The articles of incorporation filed pursuant to section 3309(3) of this act constitute the articles of a foreign corporation domesticating in Washington state;

(e) The memberships in the domesticating corporation are reclassified into memberships, obligations, rights to acquire memberships, or cash or other property in accordance with the terms of the domestication, and the members are

entitled only to the rights provided by those terms;

(f) Gift restrictions binding the domestic corporation remain in place as if the domestication had not occurred, unless modified in accordance with section 1503 of this act;

(g) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the domesticating corporation before or after the domestication, inures to the domesticated corporation, subject to the express terms of the will or other instrument; and

(h) The domesticating corporation is deemed to be:

(i) Incorporated under and subject to the organic law of the domesticated corporation for all purposes; and

(ii) The same corporation without interruption as the domesticating corporation.

(2) The interest holder liability of a member in a foreign nonprofit corporation that is domesticated in the state of Washington is as follows:

(a) The domestication does not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent the interest holder liability arose before the effective time of the articles of domestication.

(b) The member does not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(c) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the domestication had not occurred.

(d) The domestication has no effect on any member's rights of contribution from other members provided by the laws of the foreign jurisdiction with respect to any interest holder liability preserved by (a) of this subsection.

NEW SECTION. Sec. 3311. ABANDONMENT OF DOMESTICATION. (1) Unless otherwise provided in a plan of domestication of a domestic nonprofit corporation, after

the plan has been adopted and approved as required by sections 3301 through 3326 of this act, and at any time before the domestication has become effective, it may be abandoned by the members if there are members entitled to vote on the plan of domestication, or by the board without action by members.

(2) If a domestication is abandoned under subsection (1) of this section after articles of domestication have been filed by the secretary of state but before the domestication has become effective, then a statement that the domestication has been abandoned in accordance with this section, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the domestication. The statement takes effect upon filing and the domestication is abandoned and does not become effective.

(3) If the domestication of a foreign nonprofit corporation in Washington state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed by the secretary of state, then a statement that the domestication has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement takes effect upon filing and the domestication is abandoned and does not become effective.

NEW SECTION. Sec. 3312. FOR-PROFIT CONVERSION OF NONCHARITABLE CORPORATIONS. (1) A domestic nonprofit corporation, other than a charitable corporation, may become a domestic for-profit corporation pursuant to a plan of for-profit conversion if the for-profit conversion is permitted under Title 23B RCW.

(2) A domestic nonprofit corporation, other than a charitable corporation, may become a foreign for-profit corporation if the for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the foreign for-profit conversion must be approved by the adoption by the domestic nonprofit corporation of a plan of for-profit conversion in the manner provided in sections 3301 through 3326 of this act.

(3) The plan of for-profit conversion shall include:

(a) The terms and conditions of the conversion;

(b) The manner and basis of:

(i) Issuing at least one share in the corporation following its conversion; and

(ii) Otherwise reclassifying the memberships in the corporation, if any, following its conversion into shares and other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(c) If the corporation is holding assets for charitable purposes, a plan setting forth how the corporation will comply with section 3304 (1) through (3) of this act;

(d) Any desired changes to the articles or bylaws of the corporation following its conversion; and

(e) If the domestic nonprofit corporation is to be converted to a foreign for-profit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(4) The plan of for-profit conversion may also include a provision that the plan may be amended before filing articles of for-profit conversion, except that after approval of the plan by the members the plan may not be amended without the approval of the members to change:

(a) The amount or kind of shares and other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the members under the plan;

(b) The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 3104 of this act; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(5) Terms of a plan of for-profit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

(6) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic nonprofit corporation before January 1, 2022, contains a provision applying to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, then the provision is deemed to apply to a for-profit conversion of the corporation until the provision is later amended.

NEW SECTION. Sec. 3313. ACTION ON A PLAN OF FOR-PROFIT CONVERSION. In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign for-profit corporation:

(1) The plan of for-profit conversion must be adopted by the board.

(2) If there are no members entitled to vote on the plan, then the plan must be adopted by a vote of the majority of directors then in office. If a membership corporation has no members entitled to vote on the plan, then the corporation shall deliver notice of the proposed for-profit conversion to all members of the corporation at least ten days before the meeting at which the board is to adopt the plan.

(3) After adopting the plan of for-profit conversion, the board shall submit the plan to the members for their approval if there are members entitled to vote on the plan. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board determines that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board shall deliver to the members the basis for that determination.

(4) The board may condition its submission of the plan of for-profit conversion to the members on any basis.

(5) If the approval of the members is to be given at a meeting, then the corporation shall notify each member of the meeting of members at which the plan of for-profit conversion is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include a copy of the articles as they will be in effect

immediately after the for-profit conversion. If a summary is provided in lieu of a copy of the plan, then a copy of the plan must be available to members upon request and this fact must be stated in the notice.

(6) Unless the articles or bylaws, or the board acting pursuant to subsection (4) of this section, require a greater vote or a greater number of votes to be present, the approval of the plan of for-profit conversion by the members entitled to vote thereon requires approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of for-profit conversion, the approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(7) If any provision of the articles, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2022, applies to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, then the provision is deemed to apply to a for-profit conversion of the corporation until the provision is later amended.

NEW SECTION. Sec. 3314. ARTICLES OF FOR-PROFIT CONVERSION. (1) Articles of for-profit conversion must be executed on behalf of the converting corporation by an officer of the corporation. The articles shall set forth:

(a) If the surviving corporation is a domestic business corporation, the name of the corporation immediately before the filing of the articles of for-profit conversion and if that name does not satisfy the requirements of RCW 23B.04.010, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of RCW 23B.04.010;

(b) Whether the corporation is holding assets for charitable purposes;

(c) If the corporation is holding assets for charitable purposes, that the attorney general has approved, or is deemed to have approved, the for-profit conversion pursuant to section 3304(4) of this act;

(d) If the surviving corporation is a foreign for-profit corporation, its name

after the conversion and its jurisdiction of incorporation;

(e) If the nonprofit corporation has members with voting rights with respect to the for-profit conversion, a statement that the plan of for-profit conversion was approved by the members in the manner required by this chapter and the articles or bylaws; and

(f) Where there are no members or no members having voting rights with respect to the for-profit conversion, a statement to that effect, the date of the meeting of the board at which the amendment was adopted, and a statement that the amendment received the vote of a majority of directors in office.

(2) If the surviving corporation is a domestic for-profit corporation, then the articles of for-profit conversion shall either contain all of the provisions that RCW 23B.02.020 requires to be set forth in articles of incorporation of a domestic for-profit corporation and any other desired provisions permitted under Title 23B RCW, or have attached articles of incorporation that satisfy the requirements of RCW 23B.02.020. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic for-profit corporation may be omitted, except that the name and address of the initial registered agent of the for-profit corporation must be included.

(3) The articles of for-profit conversion and articles of incorporation, if a separate document, must be delivered to the secretary of state for filing, and take effect at the effective time provided in RCW 23.95.210.

NEW SECTION. Sec. 3315. EFFECT OF FOR-PROFIT CONVERSION. (1) Except as provided in section 3304 of this act, when a conversion of a domestic nonprofit corporation to a domestic or foreign for-profit corporation becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(b) The liabilities of the corporation remain the liabilities of the corporation;

(c) An action or proceeding pending against the corporation continues

against the corporation as if the conversion had not occurred;

(d) The articles of the domestic or foreign for-profit corporation become effective;

(e) The memberships of the corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the plan of conversion, and the members are entitled only to the rights provided in the plan of for-profit conversion;

(f) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the corporation before or after the for-profit conversion, continues to inure to the corporation, subject to the express terms of the will or other instrument; and

(g) The corporation is deemed to:

(i) Be a domestic or foreign for-profit corporation for all purposes; and

(ii) Be the same corporation without interruption as the nonprofit corporation.

(2) The interest holder liability of a member in a domestic nonprofit corporation that converts to a domestic for-profit corporation is as follows:

(a) The conversion does not discharge any interest holder liability of the member as a member of the nonprofit corporation to the extent the interest holder liability arose before the effective time of the articles of for-profit conversion.

(b) The member does not have interest holder liability for any debt, obligation, or liability of the for-profit corporation that arises after the effective time of the articles of for-profit conversion.

(c) The laws of this state continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

(d) The member has whatever rights of contribution from other members are provided by the laws of this state with respect to any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

(3) A member who becomes subject to interest holder liability for some or all of the debts, obligations, or liabilities of the for-profit corporation has interest holder liability only for those debts, obligations, or liabilities of the for-profit corporation that arise after the effective time of the articles of for-profit conversion.

NEW SECTION. Sec. 3316. ABANDONMENT OF FOR-PROFIT CONVERSION. (1) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by sections 3301 through 3326 of this act, and at any time before the for-profit conversion has become effective, it may be abandoned by the members if there are members entitled to vote on the for-profit conversion, or by the board without action by members.

(2) If a for-profit conversion is abandoned under subsection (1) of this section after articles of for-profit conversion have been filed by the secretary of state but before the for-profit conversion has become effective, then a statement that the for-profit conversion has been abandoned in accordance with this section, executed by an officer of the corporation, must be delivered to the secretary of state for filing before the effective date of the for-profit conversion. The statement takes effect upon filing and the for-profit conversion is abandoned and does not become effective.

NEW SECTION. Sec. 3317. FOR-PROFIT DOMESTICATION AND CONVERSION. A foreign for-profit corporation may become a domestic nonprofit corporation if the domestication and conversion is permitted by the law of the foreign jurisdiction.

NEW SECTION. Sec. 3318. ARTICLES OF DOMESTICATION AND CONVERSION. (1) Articles of domestication and conversion must be executed on behalf of the domesticating and converting corporation by an officer or other authorized representative. The articles shall set forth:

(a) The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in Washington state or the corporation desires to change its name in connection with the domestication and conversion, a

name that satisfies the requirements of section 1302 of this act;

(b) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(c) A statement that the domestication and conversion of the corporation in this state was authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in Washington state.

(2) The articles of domestication and conversion shall either contain all of the provisions that section 1303(1) of this act requires to be set forth in articles of incorporation and any other desired provisions that section 1303 (2) and (3) of this act permit to be included in articles of incorporation, or have attached articles of incorporation that comply with this chapter. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domestic nonprofit corporation must be included.

(3) If the domesticating corporation is a foreign corporation, then the domesticating corporation must, simultaneously with the delivery of the articles of domestication and conversion, deliver articles of incorporation that comply with this chapter to the secretary of state for filing and the secretary of state shall file the articles. Provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the corporation must be included and the name of the corporation must satisfy the requirements of section 1302 of this act.

(4) If the foreign for-profit corporation is authorized to transact business in Washington state under chapter 23B.01 RCW, then its registration shall be terminated automatically on the effective date of its domestication and conversion and the secretary of state shall record the termination of registration.

NEW SECTION. Sec. 3319. EFFECT OF FOR-PROFIT DOMESTICATION AND CONVERSION. (1) When a domestication and conversion

of a foreign for-profit corporation to a domestic nonprofit corporation becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(b) The liabilities of the corporation remain the liabilities of the corporation;

(c) An action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;

(d) The articles of domestication and conversion, or the articles attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

(e) Memberships, securities, obligations, rights to acquire memberships or securities of the corporation, or cash or other property must be issued or paid as provided pursuant to the laws of the foreign jurisdiction;

(f) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the foreign for-profit corporation before or after the domestication and conversion, inures to the domestic nonprofit corporation, subject to the express terms of the will or other instrument and to applicable law of the foreign jurisdiction; and

(g) The corporation is deemed to be:

(i) A domestic corporation for all purposes; and

(ii) The same corporation without interruption as the foreign for-profit corporation.

(2) The interest holder liability of a shareholder of the foreign for-profit corporation who becomes a member of the domestic nonprofit corporation in the domestication and conversion is as follows:

(a) The domestication and conversion does not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent the interest holder liability arose before the effective time of the articles of domestication and conversion.

(b) The member does not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication and conversion.

(c) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the domestication and conversion had not occurred.

(d) The member has whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any interest holder liability preserved by (a) of this subsection, as if the domestication and conversion had not occurred.

(3) A shareholder of a foreign for-profit corporation who becomes subject to interest holder liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication and conversion in this state has interest holder liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication and conversion.

NEW SECTION. Sec. 3320. ABANDONMENT OF FOR-PROFIT DOMESTICATION AND CONVERSION. If the domestication and conversion of a foreign for-profit corporation to a domestic nonprofit corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed by the secretary of state, then a statement that the domestication and conversion has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement takes effect upon filing and the domestication and conversion is abandoned and does not become effective.

NEW SECTION. Sec. 3321. ENTITY CONVERSION FOR NONCHARITABLE CORPORATIONS. (1) A domestic nonprofit corporation, other than a charitable corporation, may become a domestic unincorporated entity pursuant to a plan of entity conversion only if the entity conversion is permitted under the organic law governing the entity that would survive the entity conversion.

(2) A domestic nonprofit corporation, other than a charitable corporation, may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(3) A domestic unincorporated entity may be converted into a domestic nonprofit corporation only if applicable Washington state law provides procedures for the approval of an entity conversion into a domestic nonprofit corporation.

(4) A foreign unincorporated entity may become a domestic nonprofit corporation if the law of the foreign jurisdiction authorizes it to become a nonprofit corporation in another jurisdiction.

(5) If any provision of a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic nonprofit corporation before January 1, 2022, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, then the provision is deemed to apply to an entity conversion of the corporation until the provision is later amended.

NEW SECTION. Sec. 3322. PLAN OF ENTITY CONVERSION. (1) A plan of entity conversion shall include:

(a) A statement of the type of unincorporated entity the surviving entity will be and, if it will be a foreign unincorporated entity, its jurisdiction of organization;

(b) The terms and conditions of the conversion;

(c) The manner and basis of converting the memberships in the domestic nonprofit corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing;

(d) If the corporation is holding assets for charitable purposes, a plan setting forth how the corporation will comply with section 3304 (1) through (3) of this act; and

(e) The full text, as they will be in effect immediately following the conversion, of the organic documents of the surviving entity.

(2) The plan of entity conversion may also include a provision that the plan may be amended before filing articles of entity conversion, except that after approval of the plan by the members the plan may not be amended to change:

(a) The amount or kind of memberships or other securities, interests, obligations, rights to acquire memberships, securities, or interests, cash, or other property to be received under the plan by the members;

(b) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to section 3104(2) of this act; or

(c) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(3) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 1202(3) of this act.

NEW SECTION. Sec. 3323. ACTION ON A PLAN OF ENTITY CONVERSION. In the case of an entity conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by a vote of the majority of the directors in office.

(2) If there are no members entitled to vote on the plan, then the plan must be adopted by a vote of the majority of directors then in office. If a membership corporation has no members entitled to vote on the plan, then the corporation shall deliver notice of the proposed entity conversion to all members of the corporation at least ten days before the meeting at which the board is to adopt the plan.

(3) After adopting the plan of entity conversion, the board shall submit the plan to the members for their approval if there are members entitled to vote on the plan. The board shall also deliver to the members a recommendation that the members approve the plan, unless the board determines that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board shall deliver to

the members the basis for that determination.

(4) The board may condition its submission of the plan of entity conversion to the members on any basis.

(5) If the approval of the members is to be given at a meeting, then the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan of entity conversion is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include a copy of the organic documents as they will be in effect immediately after the entity conversion. The notice may additionally be accompanied by a summary of the required materials. If a summary is provided in lieu of a copy of the plan, then a copy of the plan must be available to members upon request and this fact must be stated in the notice. Such copy of the plan may be made available to members electronically.

(6) Unless the articles, or the board acting pursuant to subsection (3) of this section, requires a greater vote or a greater number of votes to be present, the approval of the plan of entity conversion by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan of entity conversion, the approval of a majority of the members of each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

(7) If any provision of the articles, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2022, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, then the provision is deemed to apply to an entity conversion of the corporation until the provision is later amended.

(8) If, as a result of the conversion, one or more members of the corporation would become subject to interest holder liability for the debts, obligations, or liabilities of any other person or entity, then approval of the plan of conversion requires the execution, by

each affected member, of a separate written consent to become subject to interest holder liability.

NEW SECTION. **Sec. 3324.** ARTICLES OF ENTITY CONVERSION. (1) After the conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity has been adopted and approved as required under sections 3301 through 3326 of this act, articles of entity conversion must be executed on behalf of the converting corporation by an officer of the corporation. The articles must:

(a) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must be a name that satisfies the organic law of the surviving entity if the surviving entity is a domestic entity;

(b) State whether the corporation is holding assets for charitable purposes;

(c) If the corporation is holding assets for charitable purposes, state that the attorney general has approved, or is deemed to have approved, the entity conversion pursuant to section 3304(4) of this act;

(d) State the type of unincorporated entity that the surviving entity will be and its jurisdiction of organization;

(e) State that the plan of entity conversion was approved in the manner required by this chapter; and

(f) If the surviving entity is a domestic filing entity, either contain all of the provisions required to be set forth in its public organic record and any other desired provisions that are permitted, or have attached a public organic record.

(2) After the conversion of a domestic unincorporated entity to a domestic nonprofit corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion must be executed on behalf of the unincorporated entity by an officer or other authorized representative. The articles must:

(a) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be

changed, which must be a name that satisfies the requirements of section 1302 of this act;

(b) Set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the unincorporated entity; and

(c) Either contain all of the provisions that section 1303(1) of this act requires to be set forth in articles of incorporation and any other desired provisions that section 1303 (2) and (3) of this act permit to be included in articles of incorporation, or have attached articles of incorporation that comply with this act.

(3) After the conversion of a foreign unincorporated entity to a domestic nonprofit corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign unincorporated entity by an officer or other authorized representative. The articles must:

(a) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which must be a name that satisfies the requirements of section 1302 of this act;

(b) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(c) Set forth a statement that the conversion of the unincorporated entity was approved in the manner required by the law of the foreign jurisdiction; and

(d) Either contain all of the provisions that section 1303(1) of this act requires to be set forth in articles of incorporation and any other desired provisions that section 1303 (2) and (3) of this act permit to be included in articles of incorporation, or have attached articles of incorporation that comply with this act; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

(4) The articles of entity conversion and articles of incorporation must be simultaneously delivered to the secretary of state for filing. The articles of entity conversion and articles of incorporation take effect at the effective time provided in RCW 23.95.210. Articles of entity conversion filed under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(5) If the converting entity is a foreign unincorporated entity that is registered to do business in this state under chapter 23.95 RCW, then its registration statement is canceled automatically on the effective date of its conversion.

NEW SECTION. Sec. 3325. EFFECT OF ENTITY CONVERSION. (1) Except as provided in section 3304 of this act, when a conversion under sections 3301 through 3326 of this act becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

(b) The liabilities of the converting entity remain the liabilities of the surviving entity;

(c) An action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

(d) In the case of a surviving entity that is a filing entity, its articles or public organic record and its private organic rules become effective;

(e) In the case of a surviving entity that is a nonfiling entity, its private organic rules become effective;

(f) The memberships or interests of the converting entity are reclassified into memberships, interests, other securities, obligations, rights to acquire memberships, interests, or securities, or into cash or other property in accordance with the plan of conversion; and the members or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion

and to any appraisal rights they may have under the organic law of the converting entity;

(g) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made to or for the converting entity before or after the conversion, inures to the surviving entity, subject to the express terms of the will or other instrument; and

(h) The surviving entity is deemed to be:

(i) Incorporated or organized under and subject to the organic law of the converting entity for all purposes; and

(ii) The same nonprofit corporation or unincorporated entity without interruption as the converting entity.

(2) A member who becomes subject to interest holder liability for some or all of the debts, obligations, or liabilities of the surviving entity has interest holder liability only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(3) The interest holder liability of an interest holder in an unincorporated entity that converts to a domestic nonprofit corporation is as follows:

(a) The conversion does not discharge any interest holder liability under the organic law of the unincorporated entity to the extent the interest holder liability arose before the effective time of the articles of entity conversion.

(b) The interest holder does not have interest holder liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion.

(c) The provisions of the organic law of the unincorporated entity continue to apply to the collection or discharge of any interest holder liability preserved by (a) of this subsection, as if the conversion had not occurred.

(d) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any interest holder liability preserved by (a) of this

subsection, as if the conversion had not occurred.

NEW SECTION. Sec. 3326. ABANDONMENT OF ENTITY CONVERSION. (1) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by sections 3301 through 3326 of this act, and at any time before the entity conversion has become effective, it may be abandoned by the members if there are members entitled to vote, or by the board without action by the members.

(2) If an entity conversion is abandoned after articles of entity conversion have been filed by the secretary of state but before the entity conversion has become effective, then a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer of the corporation, must be delivered to the secretary of state for filing before the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is abandoned and does not become effective.

ARTICLE 4

DISPOSITION OF ASSETS

NEW SECTION. Sec. 3401. DISPOSITIONS NOT REQUIRING MEMBER APPROVAL. Unless the articles or bylaws otherwise provide, approval of the members of a nonprofit corporation is not required:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:

(a) In the usual and regular course of its activities; or

(b) If the assets disposed of represent less than fifty percent of the total assets of the corporation and its consolidated subsidiaries, determined as of the end of the most recently completed fiscal year;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business its activities; or

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the

memberships or interests of which are owned by the corporation.

NEW SECTION. Sec. 3402. DISPOSITIONS REQUIRING MEMBER APPROVAL. (1) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 3401 of this act, requires approval of the corporation's members that are entitled to vote on the disposition, unless the articles or bylaws otherwise provide.

(2) A disposition that requires approval of the members must be initiated by a resolution by the board authorizing the disposition. After adoption of the resolution, the board shall submit the proposed disposition to the members for their approval. The board shall also deliver to the members a recommendation that the members approve the proposed disposition, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation, in which case the board shall deliver to the members the basis for that determination.

(3) The board may condition its submission of a disposition to the members under subsection (2) of this section on any basis.

(4) If a disposition is required to be approved by the members, and if the approval is to be given at a meeting, then the nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the meeting of members at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(5) Unless the articles, bylaws, or the board acting pursuant to subsection (3) of this section requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members entitled to vote thereon requires the approval of a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the disposition, the approval of a majority of the members of each separate voting group entitled to vote at

a meeting at which a quorum of the voting group is present.

(6) If a membership corporation has no members entitled to vote on a disposition, then the corporation shall deliver notice of a proposed disposition to all members of the corporation at least ten days before the meeting at which the board is to act upon the disposition.

(7) After a disposition has been approved by the members under subsection (5) of this section, and at any time before the disposition has been consummated, it may be abandoned by the nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.

(8) In addition to the approval of a disposition of assets by the board and members as required by this section, the disposition must also be approved in the form of a record by any person or group of persons whose approval is required under section 3114 of this act to amend the articles or bylaws.

(9) The assets of a direct or indirect consolidated subsidiary are deemed the assets of the parent nonprofit corporation for the purposes of this section.

(10) A disposition of assets in the course of a dissolution governed by sections 3501 through 3512 of this act is not governed by sections 3401 through 3405 of this act.

NEW SECTION. Sec. 3403. EFFECT OF DISPOSITIONS. Unless a domestic entity that is a party to a disposition of assets obtains an appropriate order of the court or approval from the attorney general under the law of this state, a disposition of assets under sections 3401 through 3405 of this act may not affect:

(1) Any restriction imposed upon the entity by its organic documents or other governing authority that may not be amended by its directors, members, or interest holders; or

(2) The existing rights of persons other than members, shareholders, or interest holders of the entity.

NEW SECTION. Sec. 3404. PROPERTY HELD FOR CHARITABLE PURPOSES. (1) In a disposition of assets under sections 3401 through 3405 of this act, property held for charitable purposes by a nonprofit

corporation may not be diverted from charitable purposes.

(2) Property held by a nonprofit corporation and restricted to charitable purposes by a gift instrument may not be diverted from the restricted charitable purpose by a disposition of assets under sections 3401 through 3405 of this act unless modified in accordance with section 1503 of this act.

(3) Property held for charitable purposes pursuant to a trust instrument governed by chapter 11.110 RCW in which the nonprofit corporation is a trustee or a beneficiary may not be diverted from the charitable purposes specified in the trust instrument unless those purposes are modified by the court or pursuant to an agreement between all interested parties, including the attorney general, under chapter 11.96A RCW.

(4) Property held by a nonprofit corporation for charitable purposes upon condition requiring return, transfer, or conveyance, which condition occurs by reason of a disposition of assets under sections 3401 through 3405 of this act, must be returned, transferred, or conveyed in accordance with that condition.

(5) A charitable corporation or a corporation holding property for charitable purposes shall deliver to the attorney general of its intent to consummate a disposition, other than a disposition described in section 3401 of this act. The notice must be delivered to the attorney general in the form of a record at least twenty days before the meeting at which the proposed disposition is to be approved. Such a disposition may not be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the disposition, approval of the disposition is deemed to have been given.

(6) The notice described in subsection (5) of this section shall include:

(a) A statement specifying how the disposition will comply with subsections (1) through (4) of this section; and

(b) A brief description of:

(i) Real property held for charitable purposes that will be included in the disposition, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held for charitable purposes that will be included in the disposition in full or in part, and their approximate total fair market value;

(iii) Other personal property held for charitable purposes that will be included in the disposition, and its nature and approximate total fair market value; and

(iv) Any gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

NEW SECTION. Sec. 3405. PROHIBITION OF FINANCIAL BENEFIT. A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with a disposition of assets governed by sections 3401 through 3405 of this act unless the person is a charitable corporation, the federal government, a tribal government, a state or local government, a governmental subdivision, or an unincorporated entity that has charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

ARTICLE 5

VOLUNTARY DISSOLUTION

NEW SECTION. Sec. 3501. AUTHORIZATION OF VOLUNTARY DISSOLUTION.

(1) Unless the articles or bylaws require a greater vote, a majority of the directors in office of a nonprofit corporation may authorize the dissolution of any nonprofit corporation that is not a membership corporation or is a membership corporation but has no members entitled to vote on its dissolution.

(2) If a membership corporation has no members entitled to vote on dissolution, then the corporation shall deliver notice of the proposed dissolution to all members of the corporation at least ten days before the meeting at which the board is to authorize the dissolution.

(3) For a membership corporation that has members that are entitled to vote on its dissolution:

(a) The board may propose dissolution for submission to the members entitled to vote, and for such a proposal to dissolve to be authorized:

(i) The board shall recommend dissolution to the members entitled to vote on the dissolution, unless the board determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the dissolution;

(ii) The board may condition its submission of the proposal for dissolution on any basis, including approval of the proposed plan of distribution if required under section 3502 of this act;

(iii) The nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the proposed meeting of members that includes the following statements:

(A) That the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and

(B) How the assets of the corporation will be distributed after all creditors have been paid or how the distribution of assets will be determined; and

(iv) The members entitled to vote on the dissolution shall approve the proposal to dissolve as provided in (b) of this subsection.

(b) Unless the articles, the bylaws, or the board acting pursuant to (a) (ii) of this subsection requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members entitled to vote thereon requires the approval of at least a majority of those members at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the proposal, the approval by a majority of the members in each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present.

NEW SECTION. Sec. 3502. DISTRIBUTION OF ASSETS ON DISSOLUTION. The assets of a corporation in the process of dissolution shall be applied and distributed in the following order:

(1) All known liabilities and obligations of the corporation must be paid, satisfied, and discharged, or

adequate provision must be made to pay, satisfy, and discharge those liabilities.

(2) All property held for charitable purposes by the corporation, including all assets of a charitable corporation remaining after satisfaction of subsection (1) of this section, must be applied and distributed consistently with the corporation's articles, such that property is not diverted from charitable purposes, and as follows:

(a) Property held for charitable purposes pursuant to a trust instrument in which the nonprofit corporation is a trustee or a beneficiary must be governed by and distributed in accordance with the trust instrument and chapter 11.110 RCW, and any modification of restrictions imposed through the trust instrument accomplished through an appropriate order of the court or the agreement of all interested parties, including the attorney general, pursuant to chapter 11.96A RCW.

(b) Property owned outright and held for charitable purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution and not subject to any gift restriction, must be transferred or conveyed:

(i) To one or more entities operated exclusively for one or more charitable purposes;

(ii) To the federal government, a tribal government, or a state or local government for a public purpose; or

(iii) Subject to one or more gift restrictions requiring the property to be used exclusively for the same charitable purposes for which the dissolving corporation holds the property.

(c) Property that is subject to charitable purpose or management or investment restrictions that do not require modification at the time of dissolution and is not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution must be transferred or conveyed subject to all restrictions applicable to the property, except to the extent restrictions are modified pursuant to section 1503 of this act before distribution, pursuant to a plan of distribution adopted by the board and as provided by sections 3501 through 3512 of this act.

(d) Property subject to charitable purpose or management or investment restrictions that require modification at the time of dissolution and are not held upon a condition requiring return, transfer, or conveyance by reason of dissolution, must be modified pursuant to section 1503 of this act before the gifts can be distributed, pursuant to a plan of distribution adopted by the board and as provided by sections 3501 through 3512 of this act.

(e) Property held for charitable purposes by the nonprofit corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, must be returned, transferred, or conveyed in accordance with those requirements.

(3) Property held by a corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, must be returned, transferred, or conveyed in accordance with the requirements of the condition.

(4) Other assets of a corporation other than a charitable corporation, if any, must be distributed:

(a) To members or other persons in accordance with the articles or bylaws, to the extent that the articles or bylaws determine the rights of members to distributions upon dissolution, or provide for distribution to other persons or classes of persons; and

(b) To the extent that the articles or bylaws do not govern distribution of assets on dissolution, to any persons the board may select.

NEW SECTION. Sec. 3503. CORPORATIONS HOLDING PROPERTY FOR CHARITABLE PURPOSES. (1) A nonprofit corporation holding property for charitable purposes, including any charitable corporation, may not deliver articles of dissolution to the secretary of state for filing pursuant to section 3504 of this act until it has complied with all of the requirements of this section.

(2) A nonprofit corporation described in subsection (1) of this section shall adopt a plan for the distribution of assets for the purpose of authorizing any transfer or conveyance of property held for charitable purposes, which shall:

(a) Be consistent with sections 3502 and 3506 of this act; and

(b) Include a brief description of the following:

(i) Real property held for charitable purposes, and its nature and location;

(ii) Cash, bank deposits, brokerage accounts, or other financial assets held for charitable purposes, and their approximate total fair market value;

(iii) Other personal property held for charitable purposes, and its nature and approximate total fair market value; and

(iv) Any gift restrictions applicable to any property described in (b)(i) through (iii) of this subsection, and the nature of those restrictions.

(3) A plan of distribution shall be adopted in the following manner:

(a) Where there are no members, or no members having voting rights, a plan of distribution is adopted at a meeting of the board upon receiving a vote of a majority of the directors in office.

(b) Where there are members having voting rights, the board shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights. Such vote may take place at the same meeting during which members having voting rights vote upon dissolution of the nonprofit corporation. Notice in the form of a record setting forth the proposed plan of distribution or a summary thereof must be given to each member, whether or not entitled to vote at the meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution is adopted upon receiving votes from a majority of the members entitled to vote at a meeting at which a quorum is present, and, if any class of members is entitled to vote as a separate group on the plan, the approval by a majority of the members in each separate voting group entitled to vote at a meeting at which a quorum of the voting group is present. If the members entitled to vote on the dissolution approve the proposal to dissolve but do not approve the proposed plan of distribution in all material respects, then the board may either accept the plan of distribution, as approved by the members, or propose a new plan of distribution to the members for approval. This process shall continue until a plan of distribution acceptable to the board has been approved by the

members. If successive votes take place at the same meeting of members, then no further notices or meetings are required.

(4) A nonprofit corporation described in subsection (1) of this section shall give the attorney general notice that it intends to dissolve. The notice shall include:

(a) A copy of the plan of distribution proposed to be adopted in accordance with subsection (3) of this section; and

(b) The names and phone numbers of individuals available to answer questions regarding the dissolution and proposed plan of distribution.

(5) Notice required under subsection (4) of this section must be delivered to the attorney general in the form of a record at least twenty days before the meeting at which the proposed plan is to be adopted. No plan of distribution for a corporation described in subsection (1) of this section may be implemented without the approval of the attorney general, or the approval of the court in a proceeding to which the attorney general is made a party. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the plan, approval of the plan is deemed to have been given.

NEW SECTION. Sec. 3504. ARTICLES OF DISSOLUTION. (1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by filing with the secretary of state articles of dissolution, accompanied by a revenue clearance certificate issued pursuant to RCW 82.32.260. The articles of dissolution shall set forth:

(a) The name of the corporation;

(b) The date of its incorporation;

(c) The effective date of the dissolution, which may be the date on which the articles of dissolution are filed or any date and time up to thirty days thereafter;

(d) Whether it is a membership corporation and, if it is a membership corporation, whether it has members that have a right to vote on its dissolution;

(e) If the corporation is not a membership corporation or has no members that have a right to vote on its

dissolution, that the dissolution was authorized by the requisite number of directors;

(f) If the corporation is a membership corporation that has members that have a right to vote on its dissolution, that the requisite number of members has approved the proposal to dissolve;

(g) Whether the corporation is a charitable corporation or is holding property for charitable purposes;

(h) If the corporation is a charitable corporation or is holding property for charitable purposes, that the attorney general has approved, or is deemed to have approved, the corporation's plan of distribution pursuant to section 3503 of this act; and

(i) That the net assets of the corporation remaining after winding up have been, or will be, distributed in accordance with the corporation's articles and bylaws and the corporation's adopted plan of distribution.

(2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.

(3) For purposes of sections 3501 through 3512 of this act, "dissolved corporation" means a nonprofit corporation whose articles of dissolution have become effective and includes a liquidating trust, if any, or other acquirer entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

NEW SECTION. Sec. 3505. REVOCATION OF DISSOLUTION. (1) A nonprofit corporation may revoke its dissolution within one hundred twenty days of the effective date of the dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board alone, in which event the board may revoke the dissolution without action by the members.

(3) Except as provided in subsection (4) of this section, after the revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (a) The name of the corporation;
- (b) The effective date of the dissolution that was revoked;
- (c) The date that the revocation of dissolution was authorized; and
- (d) That the revocation of dissolution was approved in the manner required by this chapter and by the articles and bylaws.
- (4) A charitable corporation or a nonprofit corporation holding property restricted to charitable purposes shall not deliver articles of revocation of dissolution to the secretary of state for filing without the approval of the attorney general. Such a corporation shall give the attorney general notice in the form of a record that it intends to revoke its dissolution, to which notice a copy of the articles of revocation of dissolution adopted in accordance with subsection (2) of this section must be attached. In the event that the attorney general does not deliver a notice of objection in the form of a record to the corporation within twenty days after the delivery to the attorney general of notice of the revocation of dissolution, approval of the revocation of dissolution is deemed to have been given.
- (5) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (6) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the nonprofit corporation resumes carrying on its activities as if dissolution had never occurred.

NEW SECTION. Sec. 3506. EFFECT OF DISSOLUTION. (1) A nonprofit corporation, the dissolution of which has been authorized, continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (a) Collecting its assets;
- (b) Disposing of its properties that will not be distributed in kind;
- (c) Discharging or making provision for discharging its liabilities;
- (d) Distributing its remaining property as required by the plan of distribution; and

(e) Doing every other act necessary to wind up and liquidate its activities and affairs.

(2) Dissolution of or authorization to dissolve a nonprofit corporation does not:

- (a) Transfer title to the corporation's property;
- (b) Subject its directors or officers to standards of conduct different from those prescribed in sections 2402 and 2602 of this act;
- (c) Change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (d) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (e) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;
- (f) Terminate the authority of the registered agent of the corporation; or
- (g) Modify any gift restriction, unless the restriction is modified in accordance with section 1503 of this act.

NEW SECTION. Sec. 3507. PROHIBITION OF FINANCIAL BENEFIT. No person may receive a direct or indirect financial benefit in connection with the dissolution of a charitable corporation unless the person is an entity operated exclusively for one or more charitable purposes, the federal government, a tribal government, a state or local government, or an unincorporated entity that has charitable purposes. This section does not apply to the receipt of reasonable compensation for services rendered.

NEW SECTION. Sec. 3508. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION. (1) A dissolved nonprofit corporation shall deliver notice of the dissolution in the form of a record to all of the corporation's known claimants within thirty days of the date when the corporation delivered articles of dissolution to the secretary of state for filing.

(2) A dissolved nonprofit corporation may dispose of the known claims against it by delivering a notice in the form of a record that meets the requirements

listed in subsection (3) of this section to its known claimants at any time after the date when the corporation delivered articles of dissolution to the secretary of state for filing. Delivery of a notice under this subsection shall satisfy the requirement of subsection (1) of this section if the notice is delivered to all known claimants within thirty days of the date when the corporation delivered articles of dissolution to the secretary of state for filing.

(3) A notice to claimants under subsection (2) of this section must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the notice, by which the dissolved nonprofit corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(4) A claim against the dissolved nonprofit corporation is barred:

(a) If a claimant who was given notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(5) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

NEW SECTION. Sec. 3509. OTHER CLAIMS AGAINST DISSOLVED CORPORATION. (1) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published three times during three successive weeks in a newspaper of general circulation in the county where the principal office of the dissolved nonprofit corporation or, if none in this state, its registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim shall be sent; and

(c) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the last publication of the notice.

(3) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with subsection (2) of this section, then the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the last publication date of the newspaper notice:

(a) A claimant who was not given notice under section 3508 of this act;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

NEW SECTION. Sec. 3510. ENFORCEMENT OF CLAIMS. A claim that is not barred by section 3508(4) or 3509(3) of this act may be enforced:

(1) Against the dissolved nonprofit corporation, to the extent of its undistributed assets; or

(2) Except as provided in section 3511(4) of this act, if the assets have been distributed in liquidation, against any person, other than a creditor of the dissolved corporation, to whom the corporation distributed its property, subject to the following restrictions:

(a) Recovery is limited to the amount of the distributee's pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less;

(b) A distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee; and

(c) A distributee is only liable to the extent permitted by existing common law or statutory remedies, and nothing in this section creates a separate cause of action against a distributee.

NEW SECTION. **Sec. 3511.** COURT PROCEEDINGS. (1) A dissolved nonprofit corporation that has published a notice under section 3508 of this act may file an application with the court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to be presented after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 3508(3) of this act.

(2) Within ten days after the filing of the application, the dissolved corporation shall give notice of the proceeding to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(3) The court may appoint a special representative to represent the interests of all claimants whose identities are unknown in any proceeding brought under this section. The dissolved corporation shall pay reasonable fees and expenses of the special representative, including all reasonable expert witness fees.

(4) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the court under this section satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution. Such claims may not be enforced against a person who received assets in liquidation.

NEW SECTION. **Sec. 3512.** DIRECTORS' DUTIES. (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets in accordance with the plan of distribution after payment or provision for claims.

(2) Directors of a dissolved corporation that has disposed of claims under section 3508, 3509, or 3511 of this act are not liable for breach of subsection (1) of this section with

respect to claims against the dissolved corporation that are barred or satisfied under section 3508, 3509, or 3511 of this act.

(3) Failure to dispose of claims under section 3508, 3509, or 3511 of this act is not, in and of itself, a violation of this section.

ARTICLE 6

ADMINISTRATIVE AND JUDICIAL DISSOLUTION

NEW SECTION. **Sec. 3601.** ADMINISTRATIVE DISSOLUTION. The secretary of state may commence a proceeding under RCW 23.95.610 to administratively dissolve a nonprofit corporation for any reason set forth in RCW 23.95.605.

NEW SECTION. **Sec. 3602.** PROCEDURE AND EFFECT OF ADMINISTRATIVE DISSOLUTION. (1) Administrative dissolution does not terminate, bar, or otherwise modify any claim against the administratively dissolved corporation.

(2) A person is not liable in contract, tort, or otherwise solely by reason of being a director, officer, or member of a nonprofit corporation that was dissolved under sections 3601 through 3608 of this act, with respect to the activities or affairs of the corporation that have been continued, without knowledge of the dissolution.

NEW SECTION. **Sec. 3603.** PROPERTY HELD FOR CHARITABLE PURPOSES. (1) If a charitable corporation, or a corporation holding property for charitable purposes, has been administratively dissolved and has not been reinstated, then neither the corporation nor any other person may transfer or distribute to any other person any property held for charitable purposes by the corporation unless the corporation has:

(a) Adopted a plan of distribution satisfying the requirements of section 3503(2) of this act and following the procedure set out in section 3503(3) of this act; and

(b) Obtained the approval or deemed approval of the attorney general of the plan of distribution, following the procedure set out in section 3503 (4) and (5) of this act.

(2) A corporation that has been administratively dissolved is not required to apply for reinstatement if

its only activities will consist of adopting a plan of distribution, obtaining the approval or deemed approval of the attorney general of the plan of distribution, and distributing assets in accordance with the plan of distribution.

NEW SECTION. Sec. 3604.
REINSTATEMENT OF ADMINISTRATIVELY DISSOLVED CORPORATION. A nonprofit corporation administratively dissolved under RCW 23.95.610 may apply to the secretary of state for reinstatement by following the procedure and meeting the requirements set forth in RCW 23.95.615. A nonprofit corporation denied reinstatement may obtain judicial review of the denial within the time specified in RCW 23.95.620.

NEW SECTION. Sec. 3605. JUDICIAL DISSOLUTION. The court may dissolve a nonprofit corporation:

(1) In a proceeding by the attorney general, if it is established that:

(a) The corporation obtained its articles through fraud; or

(b) The corporation has exceeded or abused, and is continuing to exceed or abuse, the authority conferred upon it by law; or

(c) The directors are deadlocked in the management of the corporate affairs; the members, if any, are unable to break the deadlock; and irreparable injury to the corporation or its purposes is threatened or being suffered because of the deadlock; or

(d) The corporation is misapplying or wasting property held for charitable purposes;

(2) Except as provided in the articles or bylaws, in a proceeding by fifty members or members holding at least five percent of the voting power, whichever is less, or by a director, if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs; the members, if any, are unable to break the deadlock; and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or have expressed intent to act in a manner that is illegal, oppressive, or fraudulent;

(c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

(d) The corporate assets are being misapplied or wasted; or

(e) The corporation has insufficient assets to continue its activities and it is no longer able to assemble a quorum of directors or members;

(3) In a proceeding by a creditor, if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in a record that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

NEW SECTION. Sec. 3606. PROCEDURE FOR JUDICIAL DISSOLUTION. (1) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(2) A person commencing a proceeding to dissolve a nonprofit corporation shall notify the attorney general of the proceeding in the form of a record if:

(a) The corporation is recognized by the internal revenue service as an organization described in section 501(c)(3) of the Internal Revenue Code; or

(b) The person bringing the proceeding knows that the nonprofit corporation is a charitable corporation or has property held for charitable purposes.

(3) The court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

NEW SECTION. Sec. 3607. RECEIVERSHIP. The court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate,

or to manage, the affairs of the corporation, pursuant to chapter 7.60 RCW.

NEW SECTION. **Sec. 3608.** DECREE OF DISSOLUTION. (1) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in section 3605 of this act exist, then it may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering a decree of dissolution, the court shall direct the winding up and liquidation of the nonprofit corporation's affairs in accordance with section 3506 of this act and the notification of claimants in accordance with sections 3508 and 3509 of this act.

PART IV

ACTIONS INVOLVING NONPROFIT CORPORATIONS

ARTICLE 1

SUPERVISION OF PROPERTY HELD FOR CHARITABLE PURPOSES

NEW SECTION. **Sec. 4101.** NOTICE TO ATTORNEY GENERAL. (1) Every notice to the attorney general required under this chapter must be served upon the attorney general. Service upon the attorney general must be via United States mail, postage prepaid, or by other means as authorized by the attorney general.

(2) Every notice to the attorney general under this chapter shall identify the provisions of this chapter relevant to the subject matter of the notice.

(3) Any person that has commenced any proceeding which this chapter authorizes the attorney general to bring, including but not limited to any proceeding involving a charitable corporation or property held for charitable purposes brought under section 1502, 1505, 2702, 3510, 3605, or 4203 of this act, shall serve notice of the commencement of the proceeding upon the attorney general. Any other party to such a proceeding may serve notice of the commencement of the proceeding upon the attorney general. To be valid, the notice must identify that it is being given pursuant to this subsection. The attorney general may waive this notice at any time.

(4) Notice to the attorney general is effective:

(a) Five days after its deposit in the United States mail, only if the postage is paid and the notice is correctly addressed; or

(b) When given, if the notice is delivered in any other manner that the attorney general has authorized.

NEW SECTION. **Sec. 4102.** ACTIONS TO SECURE PROPERTY HELD FOR CHARITABLE PURPOSES. The attorney general may commence in the court described in section 1105 of this act any action or proceeding to:

(1) Ensure compliance by a nonprofit corporation, or its members, directors, officers, employees, or agents, with any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes;

(2) Secure the proper administration of a charitable corporation, or of property held for charitable purposes by a nonprofit corporation, when reasonably necessary to protect property held for charitable purposes; and

(3) Restrain and prevent any act that violates any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes.

NEW SECTION. **Sec. 4103.** ATTORNEY GENERAL'S RIGHT TO INTERVENE. The attorney general, as of right, may intervene in any proceeding that has been commenced by a person other than the attorney general if the attorney general is otherwise authorized to bring such a proceeding under this chapter.

NEW SECTION. **Sec. 4104.** ATTORNEY GENERAL'S INVESTIGATIVE POWER. Upon reasonable suspicion that there has been a violation of any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes, or that a charitable corporation or property held for charitable purposes by a nonprofit corporation has been improperly administered, the attorney general may institute an investigation for the

purpose of determining whether there has been such a violation or improper administration.

NEW SECTION. Sec. 4105. CIVIL INVESTIGATIVE DEMANDS. (1) The attorney general may, before the institution of a civil proceeding arising from an investigation instituted under section 4104 of this act, execute in writing and cause to be served upon a person a civil investigative demand requiring the person to produce documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of those demands, whenever the attorney general believes that the person:

(a) May be in possession, custody, or control of any original or copy of any record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other document or recording, wherever situated, which the attorney general reasonably believes to be relevant to the subject matter of any investigation instituted under section 4104 of this act; or

(b) May have knowledge of any information which the attorney general reasonably believes to be relevant to the subject matter of any such investigation.

(2) The provisions of RCW 19.86.110 (2) through (9) except for RCW 19.86.110(7) (b) and (c), shall apply to every civil investigative demand issued under this section.

(3) With respect to a civil investigative demand issued under this section, the venue for filing a petition to extend a return date under RCW 19.86.110(8) or a petition for an order of enforcement under RCW 19.86.110(9) shall include any court described in section 1105 of this act.

(4) The attorney general may provide copies of documentary material, answers to written interrogatories, or transcripts of oral testimony provided under this section to an official of this state, another state, or the federal government who is charged with the enforcement of state or federal laws related to the protection or regulation of property held for charitable purposes, provided that before the disclosure the receiving official agrees in the form of a record that the information may not be disclosed to anyone other than that

official or the official's authorized employees or agents. Material provided under this subsection is subject to the limitations on disclosure contained in RCW 19.86.110(7)(a), and, where applicable, Title 5 U.S.C. Sec. 552, and may not be introduced as evidence in a criminal prosecution.

(5) The attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as the attorney general determines necessary in the enforcement of any provision of this chapter that governs the distribution, disposition, management, or expenditure of, or reporting obligations relating to, any property held for charitable purposes, including presentation before any court, provided, however, that any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

NEW SECTION. Sec. 4106. RELIGIOUS CORPORATIONS. The attorney general shall not commence any action under section 4102 of this act against a religious corporation; intervene in any action under section 4103 of this act involving a religious corporation; institute any investigation under section 4104 of this act, the subject of which is a religious corporation; or serve any civil investigative demand under section 4105 of this act on a religious corporation, unless for the purposes of this section only:

(1) The basis for the action, investigation, or civil investigative demand is the attorney general's knowledge of facts, circumstances, or results that property held by the religious corporation for charitable purposes has been, is threatened to be, or is about to be distributed in violation of section 1406 of this act;

(2) The board of directors of the religious corporation has adopted a resolution in the form of a record requesting the attorney general's involvement in the action or investigation; or

(3) The attorney general has knowledge of facts, circumstances, or results

indicating that the religious corporation has no directors in office, in which case the attorney general may investigate the issue of whether the religious corporation has directors in office, and, if necessary, appoint one or more directors of the religious corporation following the procedure set out in section 2410(4) of this act.

NEW SECTION. Sec. 4107. ASSURANCES OF DISCONTINUANCE. In the enforcement of the provisions of this chapter that govern the distribution, disposition, or expenditure of, or reporting obligations relating to, property held for charitable purposes, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of such provision, from any person engaging in, or who has engaged in, such act or practice. Any such assurance must be in writing and be filed with and subject to the approval of the court. Such assurance of discontinuance is not an admission of a violation for any purpose, but proof of failure to comply with the assurance of discontinuance is prima facie evidence of a violation of this chapter.

NEW SECTION. Sec. 4108. CIVIL PENALTIES, COSTS, AND FEES. (1) Pursuant to an action by the attorney general, a person shall forfeit and pay a civil penalty of not more than five thousand dollars for each violation if such person:

(a) Engages in conduct that violates any provision of this chapter governing the distribution, disposition, management, or expenditure of, or reporting obligations relating to, property held for charitable purposes, intending or knowing that such conduct was in violation of this chapter;

(b) As a director or officer of a corporation, votes for or assents to a distribution of property held for charitable purposes that would give rise to liability under section 2702 of this act; or

(c) Receives any portion of a distribution described in (b) of this subsection knowing that the distribution was made in violation of this chapter.

(2) Any person who shall violate the terms of any injunction issued pursuant to an action by the attorney general under section 4102 of this act shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars for each violation.

(3) At the discretion of the court, the attorney general is entitled to recovery of its costs and fees incurred in securing compliance with the provisions of this chapter governing the distribution, disposition, management, or expenditure of, or reporting obligations relating to, property held for charitable purposes.

NEW SECTION. Sec. 4109. CHARITABLE ASSET PROTECTION ACCOUNT. (1) The Washington state attorney general charitable asset protection account is created in the custody of the state treasurer. Only the attorney general or the attorney general's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for:

(a) The costs associated with the attorney general's enforcement of the provisions of this chapter governing the distribution, disposition, management, or expenditure of, or reporting obligations relating to, property held for charitable purposes, or the proper administration of a charitable corporation or property held for charitable purposes;

(b) The costs associated with the attorney general's review and handling of notices and requests submitted to the attorney general under the provisions of this chapter including, but not limited to, binding agreements described in section 1504 of this act, major changes in purposes or programs reported under section 1205 of this act, and notices of proposed transactions under sections 3101 through 3608 of this act;

(c) The costs associated with the attorney general's review and handling of notices and requests submitted to the attorney general in connection with the release or modification under RCW 24.55.045 of restrictions applicable to institutional funds;

(d) The costs associated with the attorney general's supervision of charitable trusts under the authority granted in chapter 11.110 RCW, including review and handling of binding agreements under chapter 11.96A RCW, involving assets held in charitable trust; and

(e) The charitable solicitation education program.

An appropriation is not required for expenditures, but the account is subject

to allotment procedures under chapter 43.88 RCW.

(2)(a) The secretary of state shall collect a charitable asset protection fee, in addition to fees that the secretary of state may set under section 1207 of this act, for filing:

(i) Annual reports under section 1204 of this act;

(ii) Articles of incorporation of newly formed corporations under section 1303 of this act;

(iii) Articles of domestication under section 3309 of this act; and

(iv) Articles of domestication and conversion under section 3318 of this act.

(b) The charitable asset protection fee is fifty dollars per year, reduced to ten dollars if the corporation certifies that its total gross revenue in the most recent fiscal year was less than five hundred thousand dollars.

(c) Revenue generated from the charitable asset protection fee must be distributed as follows:

(i) Ninety-five percent of the revenue must be deposited into the Washington state attorney general charitable asset protection account created in subsection (1) of this section; and

(ii) Five percent of the revenue must be deposited into the secretary of state's revolving fund to cover the administrative costs of assessing the fee.

ARTICLE 2

CONTESTED CORPORATE ACTION

NEW SECTION. Sec. 4201. DEFINITIONS. This section and sections 4202 and 4203 of this act apply to, and the term "corporate action" in this section and sections 4202 and 4203 of this act means, any of the following actions:

(1) The election, appointment, designation, or other selection and the suspension, removal, or expulsion of members, delegates, directors, or officers of a nonprofit corporation;

(2) The taking of any action on any matter that:

(a) Is required under this chapter or any other provision of law to be submitted for approval of or adoption by

the members, delegates, directors, or officers of a nonprofit corporation;

(b) Under the articles or bylaws may be submitted for approval of or adoption by the members, delegates, directors, or officers of a nonprofit corporation; or

(c) Is in fact approved or adopted by the members, delegates, directors, or officers of a nonprofit corporation.

NEW SECTION. Sec. 4202. PROCEEDINGS PRIOR TO CORPORATE ACTION. (1) Where under applicable law or the articles or bylaws of a nonprofit corporation there has been a failure to hold a meeting to take corporate action and the failure has continued for thirty days after the date designated or appropriate therefor, the court may summarily order a meeting to be held upon the application of any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue, and, in the case of a charitable corporation, upon the application of the attorney general.

(2) The court may determine the right to vote at the meeting of persons claiming that right, may appoint an individual to hold the meeting under such orders and powers as the court may deem proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.

NEW SECTION. Sec. 4203. REVIEW OF CONTESTED CORPORATE ACTION. (1) Except as provided in subsection (3) of this section, upon petition of a person whose status as, or whose rights or duties as, a member, delegate, director, or officer of a corporation are or may be affected by any corporate action, or, in the case of a charitable corporation, the attorney general, the court may hear and determine the validity of the corporate action. The petitioner shall provide notice of the proceeding to every other person the petitioner knows, or should reasonably know, to be affected by the proceeding.

(2) The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers, and records of the corporation and other evidence that may relate to the issue, and may provide for notice of the proceeding to other parties if necessary. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held

in accordance with section 4202 of this act.

(3) If a nonprofit corporation has provided in its articles or bylaws for a means of resolving a challenge to a corporate action, then subsection (1) of this section shall not apply, except in the case of actions brought by the attorney general with respect to corporate actions of charitable corporations. The court may enforce provisions of the articles or bylaws if appropriate.

PART V

REVISIONS TO EXISTING STATUTES

ARTICLE 1

SUBSTANTIVE AMENDMENTS

Sec. 5101. RCW 11.110.020 and 1985 c 30 s 114 are each amended to read as follows:

~~((When used in))~~ The definitions in this section apply throughout this chapter((~~r~~)) unless the context clearly requires otherwise ((~~requires~~)).

(1) "Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

(2) (a) "Trustee" means ~~((~~1~~))~~:

(i) Any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; ~~((~~and~~ ~~(~~2~~)~~))~~

(ii) A corporation formed for the administration of a charitable trust ((~~e~~)); and

(iii) Any person holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes(~~(~~PROVIDED, That~~)~~).

(b) Unless they are described in (a)(i) or (ii) of this subsection, the term "trustee" does not apply to ((~~a~~)):

(i) Washington nonprofit corporations incorporated under chapter 24.-- RCW (the new chapter created in section 6101 of this act) or to which chapter 24.-- RCW (the new chapter created in section 6101 of this act) applies through operation of section 1107 of this act;

(ii) Religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes(~~(~~PROVIDED, That~~)~~). However, if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or ((~~b~~))

(iii) An educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

Sec. 5102. RCW 23.95.255 and 2017 c 31 s 2 are each amended to read as follows:

(1) A domestic entity other than a limited liability partnership or nonprofit corporation shall, within one hundred twenty days of the date on which its public organic record became effective, deliver to the secretary of state for filing an initial report that states the information required under subsection (2) of this section.

(2) A domestic entity or registered foreign entity shall deliver to the secretary of state for filing an annual report that states:

(a) The name of the entity and its jurisdiction of formation;

(b) The name and street and mailing addresses of the entity's registered agent in this state;

(c) The street and mailing addresses of the entity's principal office;

(d) In the case of a registered foreign entity, the street and mailing address of

the entity's principal office in the state or country under the laws of which it is incorporated;

(e) The names of the entity's governors;

(f) A brief description of the nature of the entity's business; ~~(and)~~

(g) The entity's unified business identifier number;

(h) In the case of a nonprofit corporation, the corporation's federal employer identification number; and

(i) In the case of a nonprofit corporation, any information required under section 1205 of this act.

(3) Information in an initial or annual report must be current as of the date the report is executed by the entity.

(4) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state and at such additional times as the entity elects.

(5) If an initial or annual report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction.

(6) If an initial or annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the annual report becomes effective, the differing information in the initial or annual report is considered a statement of change under RCW 23.95.430.

(7) The secretary of state shall send to each domestic entity and registered foreign entity, not less than thirty or more than ninety days prior to the expiration date of the entity's annual renewal, a notice that the entity's annual report must be filed as required by this chapter and that any applicable annual renewal fee must be paid, and stating that if the entity fails to file its annual report or pay the annual renewal fee it will be administratively dissolved. The notice may be sent by postal or email as elected by the entity, addressed to its registered agent within the state, or to an electronic address designated by the entity in a record retained by the secretary of state.

Failure of the secretary of state to provide any such notice does not relieve a domestic entity or registered foreign entity from its obligations to file the annual report required by this chapter or to pay any applicable annual renewal fee. The option to receive the notice provided under this section by email may be selected only when the secretary of state makes the option available.

Sec. 5103. RCW 23.95.305 and 2019 c 37 s 1402 are each amended to read as follows:

(1)(a) The name of a business corporation:

(i)(A) Except in the case of a social purpose corporation, must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd.," or words or abbreviations of similar import in another language; or

(B) In the case of a social purpose corporation, must contain the words "social purpose corporation" or the abbreviation "SPC" or "S.P.C."; and

(ii) Must not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state.

(b) The name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The name may also contain either the words "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." The name of a professional service corporation organized to render dental services must contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C."

(2) The name of a nonprofit corporation:

(a) May include "club," "league," "association," "services," "committee," "fund," "society," "foundation," "guild," ".", a nonprofit

corporation," "., a nonprofit mutual corporation," or any name of like import;

(b) Except for nonprofit corporations formed prior to January 1, 1969, must not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof; (~~and~~)

(c) May not be deceptively similar to the name of an existing domestic entity which is not then administratively dissolved; and

(d) May only include the term "public benefit" or names of like import if the nonprofit corporation has been designated as a public benefit nonprofit corporation by the secretary of state in accordance with chapter ((24.03 RCW)) 24.-- RCW (the new chapter created in section 6101 of this act).

(3) The name of a limited partnership may contain the name of any partner. The name of a partnership that is not a limited liability limited partnership must contain the words "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." If the limited partnership is a limited liability limited partnership, the name must contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "LP" or "L.P."

(4) The name of a limited liability partnership must contain the words "limited liability partnership" or the abbreviation "LLP" or "L.L.P." If the name of a foreign limited liability partnership contains the words "registered limited liability partnership" or the abbreviation "R.L.L.P." or "RLLP," it may include those words or abbreviations in its foreign registration statement.

(5) (a) The name of a limited liability company:

(i) Must contain the words "limited liability company," the words "limited liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC"; and

(ii) May not contain any of the following words or phrases: "Cooperative," "partnership," "corporation," "incorporated," or the abbreviations "Corp.," "Ltd.," or

"Inc.," or "LP," "L.P.," "LLP," "L.L.P.," "LLLP," "L.L.L.P." or any words or phrases prohibited by any statute of this state.

(b) The name of a professional limited liability company must contain either the words "professional limited liability company," or the words "professional limited liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC," provided that the name of a professional limited liability company organized to render dental services must contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(6) The name of a cooperative association organized under chapter 23.86 RCW may contain the words "corporation," "incorporated," or "limited," or the abbreviation "Corp.," "Inc.," or "Ltd."

(7) The name of a limited cooperative association must contain the phrase "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA." "Limited" may be abbreviated as "Ltd." "Cooperative" may be abbreviated as "Co-op." or "Coop." "Association" may be abbreviated as "Assoc." or "Assn."

NEW SECTION. Sec. 5104. A new section is added to chapter 74.15 RCW to read as follows:

(1) A host home program must register with the secretary of state's office. This registration may occur when the secretary of state files articles of incorporation of the host home program under chapter 24.-- RCW (the new chapter created in section 6101 of this act).

(2) The host home program registration must include a notarized statement by the host home program that it meets all of the requirements set out in RCW 74.15.020(2)(o).

(3) The secretary of state has no duty to confirm that a host home program is meeting its statutory requirements. A filing under this section does not imply an endorsement by the secretary of state.

(4) The secretary of state may adopt rules necessary to carry out its duties under this section.

ARTICLE 2

AMENDMENTS TO UPDATE REFERENCES

Sec. 5201. RCW 7.60.025 and 2019 c 389 s 1 are each amended to read as follows:

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as

provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide

dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) In connection with a proceeding for relief with respect to a voidable transfer as to a present or future creditor under RCW 19.40.041 or a present creditor under RCW 19.40.051;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under (~~RCW 24.03.271~~) section 3605 of

this act, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30A.44.100, 30A.44.270, and 30A.56.030, in the case of a state commercial bank, RCW 30B.44B.100, in the case of a state trust company, RCW 32.24.070, 32.24.073, 32.24.080, and 32.24.090, in the case of a state savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW ~~((70.95A.050))~~ 70A.210.070(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time

the application is made, then notice of the application for the receiver's appointment also must be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

Sec. 5202. RCW 9.46.0209 and 2020 c 150 s 1 are each amended to read as follows:

(1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapter ~~(24.03)~~ 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 19.09 or ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, scientific, social, fraternal, athletic, or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of

gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required; and

(ii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization can be licensed by the commission and includes:

(a) A credit union organized and operating under state or federal law. All

revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities.

Sec. 5203. RCW 15.105.020 and 2004 c 26 s 3 are each amended to read as follows:

(1) The department may cooperate with other agencies, boards, commissions, and associations in the state of Washington to establish a private, nonprofit corporation for the purpose of carrying out the program. The nonprofit corporation must be organized under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and has the powers granted under

that chapter. However, this chapter does not prohibit the department or other agencies, boards, commissions, and associations from separately continuing to promote Washington products under their existing authorities.

(2) The department may contract with the successor organization to carry out the program. The contract must require the successor organization to aggressively seek to fund its continued operation from nonstate funding sources.

(3) The successor organization must report to the department each January 1st on the amounts it has secured from both nonstate and state funding sources, its operations, and its programs.

(4) Debts and other liabilities of the successor organization are successor organization debts and liabilities only and may be satisfied only from the resources of the successor organization. The state of Washington is not liable for the debts or liabilities of the successor organization.

Sec. 5204. RCW 18.100.050 and 2020 c 80 s 21 are each amended to read as follows:

(1) An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23B RCW for the purpose of rendering professional service. One or more of the legally authorized individuals shall be the incorporators of the professional corporation.

(2) Notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation.

(3) Licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization registered under chapter 48.46 RCW or federally qualified health maintenance organization, may own stock in and render their individual professional services through one professional service corporation.

(4) Professionals may organize a nonprofit nonstock corporation under this chapter and chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act) to provide professional services, and the provisions of this chapter relating to stock and referring to Title 23B RCW shall not apply to any such corporation.

(5)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.225, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.57, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own stock in and render their individual professional services through one professional service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are regulated under chapters 18.59 and 18.74 RCW may own stock in and render their individual professional services through one professional service corporation formed for the sole purpose of providing professional services within their respective scope of practice.

(c) Formation of a professional service corporation under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

Sec. 5205. RCW 18.100.130 and 1991 c 72 s 5 are each amended to read as follows:

(1) For a professional service corporation organized for pecuniary profit under this chapter, the provisions of Title 23B RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a

corporation organized pursuant to the provisions of this chapter.

(2) For a professional service corporation organized under this chapter and chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act) as a nonprofit ((~~nonstock~~)) corporation, the provisions of chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act) shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized under the provisions of this chapter.

Sec. 5206. RCW 18.100.134 and 1991 c 72 s 7 are each amended to read as follows:

A professional corporation may amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of Title 23B RCW, or to the requirements of chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act) if organized pursuant to RCW 18.100.050 as a nonprofit ((~~nonstock~~)) corporation. Upon the effective date of such amendment, the corporation shall no longer be subject to the provisions of this chapter and shall continue in existence as a corporation under Title 23B RCW or chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act).

Sec. 5207. RCW 19.142.010 and 1990 c 55 s 1 and 1990 c 33 s 556 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) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" or "member" means a person who purchases health studio services.

(3) "Health studio" includes any person or entity engaged in the sale of instruction, training, assistance or use of facilities which purport to assist patrons to improve their physical condition or appearance through physical exercise, body building, weight loss, figure development, the martial arts, or any other similar activity. For the purposes of this chapter, "health studio"

does not include: (a) Public common schools, private schools approved under RCW 28A.195.010, and public or private institutions of higher education; (b) persons providing professional services within the scope of a person's license under Title 18 RCW; (c) bona fide nonprofit organizations which have been granted tax-exempt status by the Internal Revenue Service, the functions of which as health studios are only incidental to their overall functions and purposes; (d) a person or entity which offers physical exercise, body building, figure development or similar activities as incidental features of a plan of instruction or assistance relating to diet or control of eating habits; (e) bona fide nonprofit corporations organized under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) which have members and whose members have meaningful voting rights to elect and remove a board of directors which is responsible for the operation of the health club and corporation; and (f) a preexisting facility primarily offering aerobic classes, where the initiation fee is less than fifty dollars and no memberships are sold which exceed one year in duration. For purposes of this subsection, "preexisting facility" means an existing building used for health studio services covered by the fees collected.

(4) "Health studio services" means instruction, services, privileges, or rights offered for sale by a health studio. "Health studio services" do not include: (a) Instruction or assistance relating to diet or control of eating habits not involving substantial on-site physical exercise, body building, figure development, or any other similar activity; or (b) recreational or social programs which either involve no physical exercise or exercise only incidental to the program.

(5) "Initiation or membership fee" means a fee paid either in a lump sum or in installments within twelve months of execution of the health studio services contract on a one-time basis when a person first joins a health studio for the privilege of belonging to the health studio.

(6) "Special offer or discount" means any offer of health studio services at a reduced price or without charge to a prospective member.

(7) "Use fees or dues" means fees paid on a regular periodic basis for use of a health studio. This does not preclude prepayment of use fees at the buyer's option.

Sec. 5208. RCW 23.95.105 and 2020 c 57 s 29 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or as set forth in RCW 23.95.400 or 23.95.600.

(1) "Annual report" means the report required by RCW 23.95.255.

(2) "Business corporation" means a domestic business corporation incorporated under or subject to Title 23B RCW or a foreign business corporation.

(3) "Commercial registered agent" means a person listed under RCW 23.95.420.

(4) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(5) "Electronic transmission" means an electronic communication:

(a) Not directly involving the physical transfer of a record in a tangible medium; and

(b) That may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(6) "Entity" means:

(a) A business corporation;

(b) A nonprofit corporation;

(c) A limited liability partnership;

(d) A limited partnership;

(e) A limited liability company;

(f) A general cooperative association;
or

(g) A limited cooperative association.

(7) "Entity filing" means a record delivered to the secretary of state for filing pursuant to this chapter.

(8) "Execute," "executes," or "executed" means with present intent to authenticate or adopt a record:

(a) To sign or adopt a tangible symbol;

(b) To attach to or logically associate with the record an electronic symbol, sound, or process; or

(c) With respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(9) "Filed record" means a record filed by the secretary of state pursuant to this chapter.

(10) "Foreign," with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(11) "General cooperative association" means a domestic general cooperative association formed under or subject to chapter 23.86 RCW.

(12) "Governor" means:

(a) A director of a business corporation;

(b) A director of a nonprofit corporation;

(c) A partner of a limited liability partnership;

(d) A general partner of a limited partnership;

(e) A manager of a manager-managed limited liability company;

(f) A member of a member-managed limited liability company;

(g) A director of a general cooperative association;

(h) A director of a limited cooperative association; or

(i) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(13) "Interest" means:

(a) A share in a business corporation;

(b) A membership in a nonprofit corporation;

(c) A share in a nonprofit corporation formed under chapter 24.06 RCW;

(d) A partnership interest in a limited liability partnership;

(e) A partnership interest in a limited partnership;

(f) A limited liability company interest;

(g) A share or membership in a general cooperative association; or

(h) A member's interest in a limited cooperative association.

(14) "Interest holder" means:

(a) A shareholder of a business corporation;

(b) A member of a nonprofit corporation;

(c) A shareholder of a nonprofit corporation formed under chapter 24.06 RCW;

(d) A partner of a limited liability partnership;

(e) A general partner of a limited partnership;

(f) A limited partner of a limited partnership;

(g) A member of a limited liability company;

(h) A shareholder or member of a general cooperative association; or

(i) A member of a limited cooperative association.

(15) "Jurisdiction," when used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(16) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(17) "Limited cooperative association" means a domestic limited cooperative association formed under or subject to chapter 23.100 RCW or a foreign limited cooperative association.

(18) "Limited liability company" means a domestic limited liability company formed under or subject to chapter 25.15 RCW or a foreign limited liability company.

(19) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited liability limited partnership.

(20) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to chapter 25.05 RCW or a foreign limited liability partnership.

(21) "Limited partnership" means a domestic limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited partnership. "Limited partnership" includes a limited liability limited partnership.

(22) "Noncommercial registered agent" means a person that is not a commercial registered agent and is:

(a) An individual or domestic or foreign entity that serves in this state as the registered agent of an entity;

(b) An individual who holds the office or other position in an entity which is designated as the registered agent pursuant to RCW 23.95.415(1)(b)(ii); or

(c) A government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, that serves as the registered agent of an entity.

(23) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to chapter ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act) or 24.06 RCW or a foreign nonprofit corporation.

(24) "Nonregistered foreign entity" means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the secretary of state.

(25) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(26) "Organic rules" means the public organic record and private organic rules of an entity.

(27) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or

instrumentality, or any other legal or commercial entity.

(28) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.

(29) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. "Private organic rules" includes:

(a) The bylaws of a business corporation and any agreement among shareholders pursuant to RCW 23B.07.320;

(b) The bylaws of a nonprofit corporation;

(c) The partnership agreement of a limited liability partnership;

(d) The partnership agreement of a limited partnership;

(e) The limited liability company agreement;

(f) The bylaws of a general cooperative association; and

(g) The bylaws of a limited cooperative association.

(30) "Proceeding" means civil suit and criminal, administrative, and investigatory action.

(31) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(32) "Public organic record" means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record. The term includes:

(a) The articles of incorporation of a business corporation;

(b) The articles of incorporation of a nonprofit corporation;

(c) The certificate of limited partnership of a limited partnership;

(d) The certificate of formation of a limited liability company;

(e) The articles of incorporation of a general cooperative association;

(f) The articles of organization of a limited cooperative association; and

(g) The document under the laws of another jurisdiction that is equivalent to a document listed in this subsection.

(33) "Receipt," as used in this chapter, means actual receipt. "Receive" has a corresponding meaning.

(34) "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.

(35) "Registered agent" means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

(36) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a certificate of registration filed by the secretary of state.

(37) "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.

(38) "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

(39) "Transfer" includes:

- (a) An assignment;
- (b) A conveyance;
- (c) A sale;
- (d) A lease;
- (e) An encumbrance, including a mortgage or security interest;
- (f) A change of record owner of interest;

(g) A gift; and

(h) A transfer by operation of law.

(40) "Type of entity" means a generic form of entity:

- (a) Recognized at common law; or
- (b) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of

that law that create different categories of the form of entity.

Sec. 5209. RCW 24.50.010 and 2011 c 310 s 1 are each amended to read as follows:

(1) Washington manufacturing services is organized as a private, nonprofit corporation in accordance with chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and this section. The mission of the corporation is to operate a modernization extension system, coordinate a network of public and private modernization resources, and stimulate the competitiveness of small and midsize manufacturers in Washington.

(2) The corporation must be governed by a board of directors. A majority of the board of directors shall be representatives of small and medium-sized manufacturing firms and industry associations, networks, or consortia. The board must also include at least one member representing labor unions or labor councils and, as ex officio members, the director of the department of commerce, the executive director of the state board for community and technical colleges, and the director of the workforce training and education coordinating board, or their respective designees.

(3) The corporation may be known as impact Washington and may:

(a) Charge fees for services, make and execute contracts with any individual, corporation, association, public agency, or any other entity, and employ all other legal instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter; and

(b) Receive funds from federal, state, or local governments, private businesses, foundations, or any other source for purposes consistent with this chapter.

(4) The corporation must:

(a) Develop policies, plans, and programs to assist in the modernization of businesses in targeted sectors of Washington's economy and coordinate the delivery of modernization services;

(b) Provide information about the advantages of modernization and the modernization services available in the state to federal, state, and local economic development officials, state

colleges and universities, and private providers;

(c) Collaborate with the Washington quality initiative in the development of manufacturing quality standards and quality certification programs;

(d) Collaborate with industry sector and cluster associations to inform import-impacted manufacturers about federal trade adjustment assistance funding;

(e) Serve as an information clearinghouse and provide access for users to the federal manufacturing extension partnership national research and information system; and

(f) Provide, either directly or through contracts, assistance to industry or cluster associations, networks, or consortia, that would be of value to their member firms in:

(i) Adopting advanced business management practices such as strategic planning and total quality management;

(ii) Developing mechanisms for interfirm collaboration and cooperation;

(iii) Appraising, purchasing, installing, and effectively using equipment, technologies, and processes that improve the quality of goods and services and the productivity of the firm;

(iv) Improving human resource systems and workforce training in a manner that moves firms toward flexible, high-performance work organizations;

(v) Developing new products;

(vi) Conducting market research, analysis, and development of new sales channels and export markets;

(vii) Improving processes to enhance environmental, health, and safety compliance; and

(viii) Improving credit, capital management, and business finance skills.

(5) Between thirty-five and sixty-five percent of the funds received by the corporation from the state must be used by the corporation for carrying out the duties under subsection (4)(f) of this section, consistent with the intent of RCW 24.50.005(2).

Sec. 5210. RCW 28A.710.010 and 2016 c 241 s 101 are each amended to read as follows:

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

(1) "Applicant" means a nonprofit corporation that has submitted an application to an authorizer. The nonprofit corporation must be either a public benefit nonprofit corporation as defined in (~~RCW 24.03.490~~) section 1701 of this act, or a nonprofit corporation (~~as defined in RCW 24.03.005~~) organized under chapter 24.-- RCW (the new chapter created in section 6101 of this act) that has applied for tax exempt status under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)). The nonprofit corporation may not be a sectarian or religious organization and must meet all of the requirements for a public benefit nonprofit corporation before receiving any funding under RCW 28A.710.220.

(2) "At-risk student" means a student who has an academic or economic disadvantage that requires assistance or special services to succeed in educational programs. The term includes, but is not limited to, students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families, and students who are identified as having special educational needs.

(3) "Authorizer" means the commission established in RCW 28A.710.070 or a school district approved under RCW 28A.710.090 to review, approve, or reject charter school applications; enter into, renew, or revoke charter contracts with applicants; and oversee the charter schools the entity has authorized.

(4) "Charter contract" means a fixed term, renewable contract between a charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(5) "Charter school" or "charter public school" means a public school that is established in accordance with this chapter, governed by a charter school board, and operated according to the

terms of a charter contract executed under this chapter.

(6) "Charter school board" means the board of directors appointed or selected under the terms of a charter application to manage and operate the charter school.

(7) "Commission" means the Washington state charter school commission established in RCW 28A.710.070.

(8) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(9) "Student" means a child eligible to attend a public school in the state.

Sec. 5211. RCW 35.67.020 and 2003 c 394 s 1 are each amended to read as follows:

(1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to the various customers;

(b) The location of the various customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;

(d) The different character of the service and facilities furnished various customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) The achievement of water conservation goals and the discouragement of wasteful water use practices;

(g) Capital contributions made to the system, including but not limited to, assessments;

(h) The ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ((RCW 24.03.490)) section 1701 of this act, of the land user; and

(i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-

site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

Sec. 5212. RCW 35.67.190 and 1995 c 124 s 4 are each amended to read as follows:

(1) The legislative body of such city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service to those served by its system of sewerage or system for refuse collection and disposal, which rates and charges shall be uniform for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors: ~~((1))~~ (a) The difference in cost of service to the various customers; ~~((2))~~ (b) the location of the various customers within and without the city or town; ~~((3))~~ (c) the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; ~~((4))~~ (d) the different character of the service furnished various customers; ~~((5))~~ (e) the quantity and quality of the sewage delivered and the time of its delivery; ~~((6))~~ (f) capital contributions made to the system, including but not limited to, assessments; ~~((7))~~ (g) the ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user; and ~~((8))~~ (h) any other matters which present a reasonable difference as a ground for distinction.

(2) If special indebtedness bonds or warrants are issued against the revenues, the legislative body shall by ordinance fix charges at rates which will be sufficient to take care of the costs of

maintenance and operation, bond and warrant principal and interest, sinking fund requirements, and all other expenses necessary for efficient and proper operation of the system.

(3) All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue of the system.

Sec. 5213. RCW 35.92.020 and 2020 c 20 s 1014 are each amended to read as follows:

(1) A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate systems, plants, sites, or other facilities of sewerage as defined in RCW 35.67.010, or solid waste handling as defined by RCW 70A.205.015. A city or town shall have full authority to manage, regulate, operate, control, and, except as provided in subsection (3) of this section, to fix the price of service and facilities of those systems, plants, sites, or other facilities within and without the limits of the city or town.

(2) Subject to subsection (3) of this section, the rates charged shall be uniform for the same class of customers or service and facilities. In classifying customers served or service and facilities furnished by a system or systems of sewerage, the legislative authority of the city or town may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to customers;

(b) The location of customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the parts of the system;

(d) The different character of the service and facilities furnished to customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) Capital contributions made to the systems, plants, sites, or other facilities, including but not limited to, assessments;

(g) The ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user; and

(h) Any other factors that present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide

information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law.

Sec. 5214. RCW 36.89.080 and 2003 c 394 s 3 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any stormwater control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

(a) Services furnished or to be furnished;

(b) Benefits received or to be received;

(c) The character and use of land or its water runoff characteristics;

(d) The ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user;

(e) Income level of persons served or provided benefits under this chapter, including senior citizens and ~~((disabled persons))~~ individuals with disabilities; or

(f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for stormwater control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available

roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW.

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating stormwater control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

Sec. 5215. RCW 36.94.140 and 2005 c 324 s 2 are each amended to read as follows:

(1) Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and control it. Except as provided in subsection (3) of this section, every county shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges for the service and facilities to those to whom such service and facilities are available, and to levy charges for connection to the system.

(2) The rates for availability of service and facilities, and connection charges so charged must be uniform for the same class of customers or service and facility. In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the county legislative authority may consider any or all of the following factors:

(a) The difference in cost of service to the various customers within or without the area;

(b) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;

(c) The different character of the service and facilities furnished various customers;

(d) The quantity and quality of the sewage and/or water delivered and the time of its delivery;

(e) Capital contributions made to the system or systems, including, but not limited to, assessments;

(f) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety;

(g) The (~~nonprofit~~) public benefit nonprofit corporation status, as defined in ((RCW 24.03.490)) section 1701 of this act, of the land user; and

(h) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a county may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) A county may provide assistance to aid low-income persons in connection with services provided under this chapter.

(5) The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system.

(6) A connection charge under this section for service to a manufactured housing community, as defined in RCW 59.20.030, applies to an individual lot within that community only if the system of water or sewerage provides and maintains the connection.

Sec. 5216. RCW 39.34.030 and 2019 c 91 s 1 are each amended to read as follows:

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter, except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act) or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation, partnership, or limited liability company shall be subject to audit in the

manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall contain, in addition to provisions specified in subsection (3) (a), (c), (d), (e), and (f) of this section, the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies that are party to the agreement shall be represented; and

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board."

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any obligation with respect to competitive bids or proposals that applies to the public agencies involved is satisfied if

the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) (a) Any two or more public agencies may enter into a contract providing for the joint utilization of architectural or engineering services if:

(i) The agency contracting with the architectural or engineering firm complies with the requirements for contracting for such services under chapter 39.80 RCW; and

(ii) The services to be provided to the other agency or agencies are related to, and within the general scope of, the services the architectural or engineering firm was selected to perform.

(b) Any agreement providing for the joint utilization of architectural or engineering services under this subsection must be executed for a scope of work specifically detailed in the agreement and must be entered into prior to commencement of procurement of such services under chapter 39.80 RCW.

(7) Financing of joint projects by agreement shall be as provided by law.

Sec. 5217. RCW 39.34.055 and 2011 1st sp.s. c 43 s 246 are each amended to read as follows:

The department of enterprise services may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the department. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in (~~RCW 24.03.005~~) section 1701 of this act that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state.

Sec. 5218. RCW 41.04.382 and 1993 c 194 s 4 are each amended to read as follows:

In order to qualify for services under RCW 41.04.380, state employee child care organizations shall be organized as nonprofit under chapter (~~24.03-RCW~~) 24.-- RCW (the new chapter created in section 6101 of this act).

Sec. 5219. RCW 43.06.335 and 2004 c 245 s 1 are each amended to read as follows:

(1) The Washington quality award council shall be organized as a private, nonprofit corporation, in accordance with chapter (~~24.03-RCW~~) 24.-- RCW (the new chapter created in section 6101 of this act) and this section.

(2) The council shall oversee the governor's Washington state quality award program. The purpose of the program is to improve the overall competitiveness of the state's economy by stimulating Washington state industries, business, and organizations to bring about measurable success through setting standards of organizational excellence, encouraging organizational self-assessment, identifying successful organizations as role models, and providing a valuable mechanism for promoting and strengthening a commitment to continuous quality improvement in all sectors of the state's economy. The governor shall annually present the award to organizations that improve the quality of their products and services and are noteworthy examples of high-performing work organizations, as determined by the council in consultation with the governor or appointed representative.

(3) The governor shall appoint a representative to serve on the board of directors of the council.

(4) The council shall establish a board of examiners, a recognition committee, and such other committees or subgroups as it deems appropriate to carry out its responsibilities.

(5) The council may conduct such public information, research, education, and assistance programs as it deems appropriate to further quality improvement in organizations operating in the state of Washington.

(6) The council shall:

(a) Approve and announce award recipients;

(b) Approve guidelines to examine applicant organizations;

(c) Approve appointment of board of examiners; and

(d) Arrange appropriate annual awards and recognition for recipients.

Sec. 5220. RCW 43.07.120 and 2019 c 132 s 3 are each amended to read as follows:

(1) The secretary of state must establish by rule and collect the fees in this subsection:

(a) For a copy of any law, resolution, record, or other document or paper on file in the secretary's office;

(b) For any certificate under seal;

(c) For filing and recording trademark;

(d) For each deed or patent of land issued by the governor;

(e) For recording miscellaneous records, papers, or other documents.

(2) The secretary of state may adopt rules under chapter 34.05 RCW establishing reasonable fees for the following services rendered under chapter 23.95 RCW, Title 23B RCW, chapter 18.100, 19.09, 19.77, 23.86, 23.90, ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act), 24.06, 24.12, 24.20, 24.24, 24.28, 24.36, 25.04, 25.15, 25.10, 25.05, or 26.60 RCW:

(a) Any service rendered in-person at the secretary of state's office;

(b) Any expedited service;

(c) The electronic or facsimile transmittal of information from corporation records or copies of documents;

(d) The providing of information by micrographic or other reduced-format compilation;

(e) The handling of checks, drafts, or credit or debit cards upon adoption of rules authorizing their use for which sufficient funds are not on deposit; and

(f) Special search charges.

(3) To facilitate the collection of fees, the secretary of state may establish accounts for deposits by persons who may frequently be assessed such fees to pay the fees as they are assessed. The secretary of state may make

whatever arrangements with those persons as may be necessary to carry out this section.

(4) The secretary of state may adopt rules for the use of credit or debit cards for payment of fees.

(5) No member of the legislature, state officer, justice of the supreme court, judge of the court of appeals, or judge of the superior court may be charged for any search relative to matters pertaining to the duties of his or her office; nor may such official be charged for a certified copy of any law or resolution passed by the legislature relative to his or her official duties, if such law has not been published as a state law.

Sec. 5221. RCW 43.07.190 and 2016 c 202 s 6 are each amended to read as follows:

Where the secretary of state determines that a summary face sheet or cover sheet would expedite review of any documents made under Title 23B RCW, or chapter 18.100, 23.86, 23.90, ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act), 24.06, 24.12, 24.20, 24.24, 24.36, 25.10, or 25.15 RCW, the secretary of state may require the use of a summary face sheet or cover sheet that accurately reflects the contents of the attached document. The secretary of state may, by rule adopted under chapter 34.05 RCW, specify the required contents of any summary face sheet and the type of document or documents in which the summary face sheet will be required, in addition to any other filing requirements which may be applicable.

Sec. 5222. RCW 43.15.030 and 2020 c 114 s 18 are each amended to read as follows:

(1) The Washington state leadership board is organized as a private, nonprofit, nonpartisan corporation in accordance with chapter ~~((24.03--RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and this section.

(2) The purpose of the Washington state leadership board is to:

(a) Provide the state a means of extending formal recognition for an individual's outstanding services to the state;

(b) Bring together those individuals to serve the state as ambassadors of

trade, tourism, and international goodwill; and

(c) Expand educational, sports, leadership, and/or employment opportunities for youth, veterans, and people with disabilities in Washington state.

(3) The Washington state leadership board may conduct activities in support of their mission.

(4) The Washington state leadership board is governed by a board of directors. The board of directors is composed of the governor, the lieutenant governor, and the secretary of state, who serve as ex officio, nonvoting members, and other officers and members as the Washington state leadership board designates. In addition, four legislators may be appointed to the board of directors as ex officio members in the following manner: One legislator from each of the two largest caucuses of the senate, appointed by the president of the senate, and one legislator from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives.

(5) The board of directors shall adopt bylaws and establish governance and transparency policies.

(6) The lieutenant governor's office may provide technical and financial assistance for the Washington state leadership board, where the work of the board aligns with the mission of the office. Assistance from the lieutenant governor's office may include, but is not limited to:

(a) Collaboration with the Washington state leadership board on the Washington world fellows program, a college readiness and study abroad fellowship administered by the office of the lieutenant governor;

(b) Beginning January 1, 2019, collaboration with the Washington state leadership board to administer the sports mentoring program as established under RCW 43.15.100, a mentoring program to encourage underserved youth to join sports or otherwise participate in the area of sports. If approved by the board, boundless Washington, an outdoor leadership program for young people with disabilities, shall satisfy the terms of the sports mentoring program; and

(c) The compilation of a yearly financial report, which shall be made available to the legislature no later than January 15th of each year, detailing all revenues and expenditures associated with the Washington world fellows program and the sports mentoring program. Any expenditures made by the Washington state leadership board in support of the Washington world fellows program and the sports mentoring program shall be made available to the office of the lieutenant governor for the purpose of inclusion in the annual financial report.

(7) The legislature may make appropriations in support of the Washington state leadership board subject to the availability of funds.

(8) The office of the lieutenant governor must post on its web site detailed information on all funds received by the Washington state leadership board and all expenditures by the Washington state leadership board.

Sec. 5223. RCW 43.105.020 and 2017 c 92 s 2 are each amended to read as follows:

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

(1) "Agency" means the consolidated technology services agency.

(2) "Board" means the technology services board.

(3) "Customer agencies" means all entities that purchase or use information technology resources, telecommunications, or services from the consolidated technology services agency.

(4) "Director" means the state chief information officer, who is the director of the consolidated technology services agency.

(5) "Enterprise architecture" means an ongoing activity for translating business vision and strategy into effective enterprise change. It is a continuous activity. Enterprise architecture creates, communicates, and improves the key principles and models that describe the enterprise's future state and enable its evolution.

(6) "Equipment" means the machines, devices, and transmission facilities used in information processing, including but not limited to computers, terminals, telephones, wireless

communications system facilities, cables, and any physical facility necessary for the operation of such equipment.

(7) "Information" includes, but is not limited to, data, text, voice, and video.

(8) "Information security" means the protection of communication and information resources from unauthorized access, use, disclosure, disruption, modification, or destruction in order to:

(a) Prevent improper information modification or destruction;

(b) Preserve authorized restrictions on information access and disclosure;

(c) Ensure timely and reliable access to and use of information; and

(d) Maintain the confidentiality, integrity, and availability of information.

(9) "Information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, radio technologies, and all related interactions between people and machines.

(10) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

(11) "K-20 network" means the network established in RCW 43.41.391.

(12) "Local governments" includes all municipal and quasi-municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately.

(13) "Office" means the office of the state chief information officer within the consolidated technology services agency.

(14) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications.

(15) "Proprietary software" means that software offered for sale or license.

(16) "Public agency" means any agency of this state or another state; any political subdivision or unit of local government of this state or another state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any public benefit nonprofit corporation; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(17) "Public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in (~~RCW 24.03.005~~) section 1701 of this act that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or political subdivision of another state.

(18) "Public record" has the definitions in RCW 42.56.010 and chapter 40.14 RCW and includes legislative records and court records that are available for public inspection.

(19) "Public safety" refers to any entity or services that ensure the welfare and protection of the public.

(20) "Security incident" means an accidental or deliberative event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources.

(21) "State agency" means every state office, department, division, bureau, board, commission, or other state agency, including offices headed by a statewide elected official.

(22) "Telecommunications" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines.

(23) "Utility-based infrastructure services" includes personal computer and portable device support, servers and server administration, security administration, network administration, telephony, email, and other information

technology services commonly used by state agencies.

Sec. 5224. RCW 43.210.020 and 1998 c 109 s 1 are each amended to read as follows:

A nonprofit corporation, to be known as the small business export finance assistance center, and branches subject to its authority, may be formed under chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act) for the following public purposes:

(1) To assist small and medium-sized businesses in both urban and rural areas in the financing of export transactions.

(2) To provide, singly or in conjunction with other organizations, information and assistance to these businesses about export opportunities and financing alternatives.

Sec. 5225. RCW 43.210.040 and 2010 c 166 s 1 are each amended to read as follows:

(1) The small business export finance assistance center formed under RCW 43.210.020 and 43.210.030 has the powers granted under chapter (~~(24.03 RCW)~~) 24.-- RCW (the new chapter created in section 6101 of this act). In exercising such powers, the center may:

(a) Solicit and accept grants, contributions, and any other financial assistance from the federal government, federal agencies, and any other sources to carry out its purposes;

(b) Make loans or provide loan guarantees on loans made by financial institutions to Washington businesses with annual sales of two hundred million dollars or less for the purpose of financing exports of goods or services by those businesses to buyers in foreign countries and for the purpose of financing business growth to accommodate increased export sales. Loans or loan guarantees made under the authority of this section may only be considered upon a financial institution's assurance that such loan or loan guarantee is otherwise not available;

(c) Provide assistance to businesses with annual sales of two hundred million dollars or less in obtaining loans and guarantees of loans made by financial institutions for the purpose of financing export of goods or services from the state of Washington;

(d) Provide export finance and risk mitigation counseling to Washington exporters with annual sales of two hundred million dollars or less, provided that such counseling is not practicably available from a Washington for-profit business. For such counseling, the center may charge reasonable fees as it determines are necessary;

(e) Provide assistance in obtaining export credit insurance or alternate forms of foreign risk mitigation to facilitate the export of goods and services from the state of Washington;

(f) Be available as a teaching resource to both public and private sponsors of workshops and programs relating to the financing and risk mitigation aspects of exporting products and services from the state of Washington;

(g) Develop a comprehensive inventory of export-financing resources, both public and private, including information on resource applicability to specific countries and payment terms;

(h) Contract with the federal government and its agencies to become a program administrator for federally provided loan guarantee and export credit insurance programs; and

(i) Take whatever action may be necessary to accomplish the purposes set forth in this chapter.

(2) The center may not use any Washington state funds or funds which come from the public treasury of the state of Washington to make loans or to make any payment under a loan guarantee agreement. Under no circumstances may the center use any funds received under RCW 43.210.050 to make or assist in making any loan or to pay or assist in paying any amount under a loan guarantee agreement. Debts of the center shall be center debts only and may be satisfied only from the resources of the center. The state of Washington shall not in any way be liable for such debts.

(3) The small business export finance assistance center shall make every effort to seek nonstate funds for its continued operation.

(4) The small business export finance assistance center may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the

use and benefit of the purposes of the small business export finance assistance center and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

Sec. 5226. RCW 43.330.135 and 2009 c 565 s 8 are each amended to read as follows:

(1) The department of commerce shall distribute such funds as are appropriated for the statewide technical support, development, and enhancement of court-appointed special advocate programs.

(2) In order to receive money under subsection (1) of this section, an organization providing statewide technical support, development, and enhancement of court-appointed special advocate programs must meet all of the following requirements:

(a) The organization must provide statewide support, development, and enhancement of court-appointed special advocate programs that offer guardian ad litem services as provided in RCW 26.12.175, 26.44.053, and 13.34.100;

(b) All guardians ad litem working under court-appointed special advocate programs supported, developed, or enhanced by the organization must be volunteers and may not receive payment for services rendered pursuant to the program. The organization may include paid positions that are exclusively administrative in nature, in keeping with the scope and purpose of this section; and

(c) The organization providing statewide technical support, development, and enhancement of court-appointed special advocate programs must be a public benefit nonprofit corporation as defined in (~~RCW 24.03.490~~) section 1701 of this act.

(3) If more than one organization is eligible to receive money under this section, the department shall develop criteria for allocation of appropriated money among the eligible organizations.

Sec. 5227. RCW 46.19.020 and 2017 c 151 s 1 are each amended to read as follows:

(1) The following organizations may apply for special parking privileges:

(a) Public transportation authorities;

(b) Nursing homes licensed under chapter 18.51 RCW;

(c) Assisted living facilities licensed under chapter 18.20 RCW;

(d) Senior citizen centers;

(e) Accessible van rental companies registered with the department;

(f) Private nonprofit corporations (~~as defined in RCW 24.03.005~~) organized under chapter 24.-- RCW (the new chapter created in section 6101 of this act);

(g) Cabulance companies that regularly transport persons with disabilities who have been determined eligible for special parking privileges under this section and who are registered with the department under chapter 46.72 RCW; and

(h) Companies that dispatch taxicab vehicles under chapter 81.72 RCW or vehicles for hire under chapter 46.72 RCW, for such vehicles that are equipped with wheelchair accessible lifts or ramps for the transport of persons with disabilities and that are regularly dispatched and used in the transport of such persons. However, qualifying vehicles under this subsection (1) (h) may utilize special parking privileges only while in service. For the purposes of this subsection (1) (h), "in service" means while in the process of picking up, transporting, or discharging a passenger.

(2) An organization that qualifies for special parking privileges may receive, upon application, special license plates or parking placards, or both, for persons with disabilities as defined by the department.

(3) An organization that qualifies for special parking privileges under subsection (1) of this section and receives parking placards or special license plates under subsection (2) of this section is responsible for ensuring that the parking placards and special license plates are not used improperly and is responsible for all fines and penalties for improper use.

(4) The department shall adopt rules to determine organization eligibility.

Sec. 5228. RCW 48.30.135 and 2015 c 272 s 4 are each amended to read as follows:

(1) An insurance producer may sponsor events for, or make contributions to a bona fide charitable or nonprofit organization, if the sponsorship or contribution is not conditioned upon the

organization applying for or obtaining insurance through the insurance producer.

(2) For purposes of this section, a bona fide charitable or nonprofit organization is:

(a) Any nonprofit corporation duly existing under the provisions of chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, cultural, athletic, scientific, agricultural, or horticultural purposes;

(b) Any professional, commercial, industrial, or trade association;

(c) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW;

(d) Any agricultural fair authorized under the provisions of chapter 15.76 or 36.37 RCW; or

(e) Any nonprofit organization, whether incorporated or otherwise, when determined by the commissioner to be organized and operated for one or more of the purposes described in (a) through (d) of this subsection.

(3) RCW 48.30.140 and 48.30.150 do not apply to sponsorships or charitable contributions that are provided or given in compliance with subsection (1) of this section.

Sec. 5229. RCW 48.62.021 and 2015 c 109 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) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(2) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water-sewer districts, school districts,

fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, quasi-municipal corporations, nonprofit corporations comprised of only units of local government, or a group comprised of local governments joined by an interlocal agreement authorized by chapter 39.34 RCW.

(3) "Nonprofit corporation" or "corporation" has the same meaning as defined in ~~((RCW 24.03.005(3)))~~ section 1102 of this act or a similar statute with similar intent within the entity's state of domicile.

(4) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(5) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(6) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(7) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services.

Sec. 5230. RCW 48.180.010 and 2015 c 109 s 6 are each amended to read as follows:

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

(1) "Nonprofit corporation" or "corporation" has the same meaning as defined in ~~((RCW 24.03.005))~~ section 1102 of this act.

(2) "Property and liability risks" includes the risk of property damage or loss sustained by a nonprofit corporation and the risk of claims arising from the tortious or negligent conduct or any

error or omission of the entity, its officers, employees, agents, or volunteers as a result of a claim that may be made against the entity.

(3) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(4) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services.

Sec. 5231. RCW 64.34.300 and 1992 c 220 s 14 are each amended to read as follows:

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act), the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control.

Sec. 5232. RCW 64.38.025 and 2019 c 238 s 222 are each amended to read as follows:

(1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act).

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or

approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Except as provided in RCW 64.90.080, 64.90.405(1) (b) and (c), and 64.90.525, within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during

the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

Sec. 5233. RCW 64.90.400 and 2018 c 277 s 301 are each amended to read as follows:

(1) A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed to a purchaser.

(2) The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under RCW 64.90.290 or their heirs, successors, or assigns.

(3) The association must have a board and be organized as a for-profit or nonprofit corporation or limited liability company.

(4) In case of any conflict between Title 23B RCW or chapter 23.86, (~~24.03~~) 24.-- (the new chapter created in section 6101 of this act), 24.06, or 25.15 RCW and this chapter, this chapter controls.

Sec. 5234. RCW 66.24.495 and 1997 c 321 s 33 are each amended to read as follows:

(1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter (~~24.03 RCW~~) 24.-- RCW (the new chapter created in section 6101 of this act) and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or

certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor ~~((control))~~ and cannabis board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

Sec. 5235. RCW 66.24.680 and 2014 c 78 s 1 are each amended to read as follows:

(1) There shall be a license to be designated as a senior center license. This shall be a license issued to a nonprofit organization whose primary service is providing recreational and social activities for seniors on the licensed premises. This license shall permit the licensee to sell spirits by the individual glass, including mixed drinks and cocktails mixed on the premises only, beer and wine, at retail for consumption on the premises.

(2) To qualify for this license, the applicant entity must:

(a) Be a nonprofit organization under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act);

(b) Be open at times and durations established by the board; and

(c) Provide limited food service as defined by the board.

(3) All alcohol servers must have a valid mandatory alcohol server training permit.

(4) The board shall adopt rules to implement this section.

(5) The annual fee for this license shall be seven hundred twenty dollars.

Sec. 5236. RCW 68.20.020 and 1983 c 3 s 167 are each amended to read as follows:

Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act). A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington.

Sec. 5237. RCW 70.45.070 and 1997 c 332 s 7 are each amended to read as follows:

The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act), the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives,

and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity.

Sec. 5238. RCW 70.290.030 and 2013 c 144 s 48 are each amended to read as follows:

(1) The association is comprised of all health carriers issuing or renewing health benefit plans in Washington state and all third-party administrators conducting business on behalf of

residents of Washington state or Washington health care providers and facilities. Third-party administrators are subject to registration under RCW 70.290.075.

(2) The association is a nonprofit corporation under chapter ~~((24.03-RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and has the powers granted under that chapter.

(3) The board of directors includes the following voting members:

(a) Four members, selected from health carriers or third-party administrators, excluding health maintenance organizations, that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(b) One member selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(c) One member, representing health carriers not otherwise represented on the board under (a) or (b) of this subsection, who is elected from among the health carrier members not designated under (a) or (b) of this subsection.

(d) One member, representing Taft Hartley plans, appointed by the secretary from a list of nominees submitted by the Northwest administrators association.

(e) One member representing Washington state employers offering self-funded health coverage, appointed by the secretary from a list of nominees submitted by the Puget Sound health alliance.

(f) Two physician members appointed by the secretary, including at least one board certified pediatrician.

(g) The secretary, or a designee of the secretary with expertise in childhood

immunization purchasing and distribution.

(4) The directors' terms and appointments must be specified in the plan of operation adopted by the association.

(5) The board of directors of the association must:

(a) Prepare and adopt articles of association and bylaws;

(b) Prepare and adopt a plan of operation. The plan of operation must include a dispute mechanism through which a carrier or third-party administrator can challenge an assessment determination by the board under RCW 70.290.040. The board must include a means to bring unresolved disputes to an impartial decision maker as a component of the dispute mechanism;

(c) Submit the plan of operation to the secretary for approval;

(d) Conduct all activities in accordance with the approved plan of operation;

(e) Enter into contracts as necessary or proper to collect and disburse the assessment;

(f) Enter into contracts as necessary or proper to administer the plan of operation;

(g) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against members of the association or other participating person;

(h) Appoint, from among its directors, committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary;

(i) Obtain such liability and other insurance coverage for the benefit of the association, its directors, officers, employees, and agents as may in the judgment of the board of directors be helpful or necessary for the operation of the association;

(j) On an annual basis, beginning no later than November 1, 2010, and by November 1st of each year thereafter, establish the estimated amount of the assessment;

(k) Notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's estimated total assessment by November 15th of each year;

(l) Submit a periodic report to the secretary listing those health carriers or third-party administrators that failed to remit their assessments and audit health carrier and third-party administrator books and records for accuracy of assessment payment submission;

(m) Allow each health carrier or third-party administrator no more than ninety days after the notification required by (k) of this subsection to remit any amounts in arrears or submit a payment plan, subject to approval by the association and initial payment under an approved payment plan;

(n) Deposit annual assessments collected by the association, less the association's administrative costs, with the state treasurer to the credit of the universal vaccine purchase account established in RCW 43.70.720;

(o) Borrow and repay such working capital, reserve, or other funds as, in the judgment of the board of directors, may be helpful or necessary for the operation of the association; and

(p) Perform any other functions as may be necessary or proper to carry out the plan of operation and to affect any or all of the purposes for which the association is organized.

(6) The secretary must convene the initial meeting of the association board of directors.

Sec. 5239. RCW 74.15.020 and 2020 c 331 s 10 and 2020 c 265 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children

for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster family home, which is maintained and operated for the care of a group of children on a twenty-

four hour basis. "Group care facility" includes but is not limited to:

(i) Qualified residential treatment programs as defined in RCW 13.34.030;

(ii) Facilities specializing in providing prenatal, postpartum, or parenting supports for youth; and

(iii) Facilities providing high-quality residential care and supportive services to children who are, or who are at risk of becoming, victims of sex trafficking;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is

available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a) (i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a) (i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that

provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o) (i) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department, if that program: (A) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (B) screens and provides case management services to youth in the program; (C) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months; (D) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (E) provides mandatory reporter and confidentiality training; and (F) registers with the secretary of state (~~as provided in RCW 24.03.550~~) under section 5104 of this act.

(ii) For purposes of this section, a "host home" is a private home that volunteers to host youth in need of temporary placement that is associated with a host home program.

(iii) For purposes of this section, a "host home program" is a program that provides support to individual host homes and meets the requirements of (o) (i) of this subsection.

(iv) Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, including but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the state;

(p) Receiving centers as defined in RCW 7.68.380.

(3) "Department" means the department of children, youth, and families.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under

the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of the department.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and

training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

Sec. 5240. RCW 79A.30.030 and 2013 c 31 s 2 are each amended to read as follows:

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter (~~(24.03 RCW)~~) 24.-RCW (the new chapter created in section 6101 of this act) to carry out the purposes of this chapter. Except as provided in RCW 79A.30.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for an eleven-member board of directors for the authority, all appointed by the commission. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. Of the board members appointed pursuant to chapter 31, Laws of 2013, one shall serve an initial one-year term, one shall serve an initial two-year term, and two shall serve an initial term of three years. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the commission appoint board members as follows:

(i) One board member shall represent the interests of the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the commission shall solicit recommendations from the county legislative authority; and

(iii) Nine board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least three of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the commission shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and individuals with disabilities.

(4) The commission shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under (~~(RCW 24.03.127)~~) section 2402 of this act.

Sec. 5241. RCW 79A.30.040 and 1995 c 200 s 5 are each amended to read as follows:

To meet its responsibility for developing, promoting, operating, managing, and maintaining the state horse park, the authority is empowered to do the following:

(1) Exercise the general powers authorized for any nonprofit corporation as specified in (~~(RCW 24.03.035)~~) section 1403 of this act. All debts of the authority shall be in the name of the authority and shall not be debts of the state of Washington for which the state or any state agency shall have any obligation to pay; and the authority may not issue bonds. Neither the full faith and credit of the state nor the state's taxing power is pledged for any indebtedness of the authority;

(2) Employ and discharge at its discretion employees, agents, advisors, and other personnel;

(3) Apply for or solicit, accept, administer, and dispose of grants, gifts,

and bequests of money, services, securities, real estate, or other property. However, if the authority accepts a donation designated for a specific purpose, the authority shall use the donation for the designated purpose;

(4) Establish, revise, collect, manage, and expend such fees and charges at the state horse park as the authority deems necessary to accomplish its responsibilities;

(5) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority and the state horse park;

(6) Authorize use of the state horse park facilities by the general public and by and for compatible nonequestrian events as the authority deems reasonable, so long as the primacy of the center for horse-related purposes is not compromised;

(7) Insure its obligations and potential liability;

(8) Enter into cooperative agreements with and provide for private nonprofit groups to use the state horse park facilities and property to raise money to contribute gifts, grants, and support to the authority for the purposes of this chapter;

(9) Grant concessions or leases at the state horse park upon such terms and conditions as the authority deems appropriate, but in no event shall the term of a concession or lease exceed twenty-five years. Concessions and leases shall be consistent with the purposes of this chapter and may be renegotiated at least every five years; and

(10) Generally undertake any and all lawful acts necessary or appropriate to carry out the purposes for which the authority and the state horse park are created.

Sec. 5242. RCW 79A.35.130 and 2011 c 56 s 1 are each amended to read as follows:

Participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while

performing environmental and trail maintenance work provided:

(1) The nonprofit organization must be registered as a nonprofit corporation pursuant to chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act);

(2) The nonprofit organization's management and administrative headquarters must be located in Washington;

(3) Participants in the program spend at least fifteen percent of their time in the program on education and training activities; and

(4) Participants in the program receive a stipend or living allowance as authorized by federal or state law.

Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

Sec. 5243. RCW 79A.70.030 and 2014 c 86 s 8 are each amended to read as follows:

(1) By September 1, 2000, the commission shall file articles of incorporation in accordance with the Washington nonprofit corporation act, chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act), to establish the Washington state parks foundation. The foundation shall not be an agency, instrumentality, or political subdivision of the state and shall not disburse public funds.

(2) The foundation shall have a board of directors consisting of up to fifteen members, whose terms, method of appointment, and authority must be in accordance with the Washington nonprofit corporation act, chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act).

Sec. 5244. RCW 82.04.4251 and 2006 c 310 s 1 are each amended to read as follows:

This chapter does not apply to amounts received by a nonprofit corporation organized under chapter ((~~24.03 RCW~~)) 24.-- RCW (the new chapter created in section 6101 of this act) as payments or contributions from the state or any county, city, town, municipal corporation, quasi-municipal

corporation, federally recognized Indian tribe, port district, or public corporation for the promotion of conventions and tourism.

Sec. 5245. RCW 82.04.4264 and 2012 c 10 s 71 are each amended to read as follows:

(1) This chapter does not apply to amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility.

(2) As used in this section:

(a) "Domiciliary care" has the meaning provided in RCW 18.20.020.

(b) "Nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3), is incorporated under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act), is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

Sec. 5246. RCW 82.04.431 and 2011 1st sp.s. c 19 s 3 are each amended to read as follows:

(1) The term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a domestic or foreign ~~((not-for-profit))~~ nonprofit corporation under chapter ~~((24.03 RCW))~~ 24.-- RCW (the new chapter created in section 6101 of this act) and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;

(l) Community services to low-income individuals, families, and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state; and

(m) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(i) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(ii) By a person that does not furnish lodging or related services to the general public.

Sec. 5247. RCW 82.04.4328 and 2020 c 139 s 9 are each amended to read as follows:

(1) For the purposes of RCW 82.04.4327, 82.08.031, and 82.12.031, the term "artistic or cultural organization" means an organization that is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public. The organization must be a ~~((not for profit)) nonprofit~~ corporation under chapter ~~((24.03 RCW)) 24.-- RCW (the new chapter created in section 6101 of this act)~~ and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation under RCW 82.04.4327, 82.08.031, and 82.12.031, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services

rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue must have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

Sec. 5248. RCW 82.08.0203 and 2008 c 260 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of trail grooming services to the state of Washington or nonprofit corporations organized under chapter ~~((24.03 RCW)) 24.-- RCW (the new~~

chapter created in section 6101 of this act). For the purposes of this section, "trail grooming" means the activity of snow compacting, snow redistribution, or snow removal on state-owned or privately owned trails.

Sec. 5249. RCW 82.08.0293 and 2019 c 8 s 401 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco; and

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(b) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(c) (i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(ii) Food is "sold with eating utensils provided by the seller" if:

(A) The seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is prepackaged with a utensil, the seller is considered to have

physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the North American industry classification system (NAICS);

(B) A plate, glass, cup, or bowl is necessary to receive the food or food ingredient, and the seller makes those utensils available to its customers; or

(C)(I) The seller makes utensils available to its customers, and the seller has more than seventy-five percent prepared food sales. For purposes of this subsection (2)(c)(ii)(C), a seller has more than seventy-five percent prepared food sales if the seller's gross retail sales of prepared food under (c)(i)(A), (c)(i)(C), and (c)(ii)(B) of this subsection equal more than seventy-five percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, and dietary supplements.

(II) However, even if a seller has more than seventy-five percent prepared food sales, four servings or more of food or food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients must be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(III) The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than ninety days after the beginning of the seller's calendar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the

seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first ninety days of operation materially depart from the seller's estimate.

(iii) "Prepared food" does not include the following items, if sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(d) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a (~~not-for-profit~~) nonprofit organization organized under chapter (~~24.03~~) 24.-- (the new chapter created in section 6101 of this act) or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital

community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks, bottled water, and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

Sec. 5250. RCW 82.12.0293 and 2017 3rd sp.s. c 28 s 102 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled

water, or dietary supplements. "Prepared food," "soft drinks," "bottled water," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a (~~not-for-profit~~) nonprofit organization organized under chapter (~~(24.03)~~) 24.-- (the new chapter created in section 6101 of this act) or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

Sec. 5251. RCW 88.46.065 and 1994 sp.s. c 9 s 853 are each amended to read as follows:

A nonprofit corporation established for the sole purpose of providing contingency plan coverage for any vessel in compliance with RCW 88.46.060 is entitled to liability protection as provided in this section. Obligations incurred by the corporation and any other liabilities or claims against the corporation may be enforced only against the assets of the corporation, and no liability for the debts or actions of the corporation exists against a director, officer, member, employee, incident commander, agent, contractor, or subcontractor of the corporation in his or her individual or representative capacity. Except as otherwise provided in this chapter, neither the directors, officers, members, employees, incident (~~commander(s)~~) commanders, or agents

of the corporation, nor the business entities by whom they are regularly employed may be held individually responsible for discretionary decisions, errors in judgment, mistakes, or other acts, either of commission or omission, that are directly related to the operation or implementation of contingency plans, other than for acts of gross negligence or willful or wanton misconduct. The corporation may insure and defend and indemnify the directors, officers, members, employees, incident commanders, and agents to the extent permitted by chapters 23B.08 and ~~((24.03))~~ 24.-- (the new chapter created in section 6101 of this act) RCW. This section does not alter or limit the responsibility or liability of any person for the operation of a motor vehicle.

Sec. 5252. RCW 89.08.405 and 2015 c 88 s 1 are each amended to read as follows:

(1) Any county legislative authority may approve by resolution revenues to a conservation district by fixing rates and charges. The county legislative authority may provide for this system of rates and charges as an alternative to, but not in addition to, a special assessment provided by RCW 89.08.400. In fixing rates and charges, the county legislative authority may in its discretion consider the information proposed to the county legislative authority by a conservation district consistent with this section.

(2) A conservation district, in proposing a system of rates and charges, may consider:

(a) Services furnished, to be furnished, or available to the landowner;

(b) Benefits received, to be received, or available to the property;

(c) The character and use of land;

(d) The ~~((nonprofit))~~ public benefit nonprofit corporation status, as defined in ~~((RCW 24.03.490))~~ section 1701 of this act, of the land user;

(e) The income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or

(f) Any other matters that present a reasonable difference as a ground for distinction, including the natural resource needs within the district and

the capacity of the district to provide either services or improvements, or both.

(3) (a) The system of rates and charges may include an annual per acre amount, an annual per parcel amount, or an annual per parcel amount plus an annual per acre amount. If included in the system of rates and charges, the maximum annual per acre rate or charge shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars, except that for counties with a population of over four hundred eighty thousand persons, the maximum annual per parcel rate shall not exceed ten dollars, and for counties with a population of over one million five hundred thousand persons, the maximum annual per parcel rate shall not exceed fifteen dollars.

(b) Public land, including lands owned or held by the state, shall be subject to rates and charges to the same extent as privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the rates and charges of a conservation district.

(c) Forestlands used solely for the planting, growing, or harvesting of trees may be subject to rates and charges if such lands are served by the activities of the conservation district. However, if the system of rates and charges includes an annual per acre amount or an annual per parcel amount plus an annual per acre amount, the per acre rate or charge on such forestlands shall not exceed one-tenth of the weighted average per acre rate or charge on all other lands within the conservation district that are subject to rates and charges. The calculation of the weighted average per acre shall be a ratio calculated as follows: (i) The numerator shall be the total amount of money estimated to be derived from the per acre special rates and charges on the nonforestlands in the conservation district; and (ii) the denominator shall be the total number of nonforestland acres in the conservation district that are served by the activities of the conservation district and that are subject to the rates or charges of the conservation district. No more than ten thousand acres of such forestlands that is both owned by the same person or entity and is located in the same conservation district may be subject to the rates and charges that are imposed for that conservation district in any year. Per parcel charges shall not be

imposed on forestland parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forestland owner may be imposed on each owner of forestlands whose forestlands are subject to a per acre rate or charge.

(4) The consideration, development, adoption, and implementation of a system of rates and charges shall follow the same public notice and hearing process and be subject to the same procedure and authority of RCW 89.08.400(2).

(5)(a) Following the adoption of a system of rates and charges, the conservation district board of supervisors shall establish by resolution a process providing for landowner appeals of the individual rates and charges as applicable to a parcel or parcels.

(b) Any appeal must be filed by the landowner with the conservation district no later than twenty-one days after the date property taxes are due. The decision of the board of supervisors regarding any appeal shall be final and conclusive.

(c) Any appeal of the decision of the board shall be to the superior court of the county in which the district is located, and served and filed within twenty-one days of the date of the board's written decision.

(6) A conservation district shall prepare a roll that implements the system of rates and charges approved by the county legislative authority. The rates and charges from the roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of the rates and charges shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, and collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected rates and charges, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the rates and charges, but not to exceed the actual costs of such work. All remaining funds collected under this section shall be transferred to the conservation district and used by the

conservation district in accordance with this section.

(7) The rates and charges for a conservation district shall not be spread on the tax rolls and shall not be allocated with property tax collections in the following year if, after the system of rates and charges has been approved by the county legislative authority but before the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such rates and charges, which petition has been signed by at least twenty percent of the owners of land that would be subject to the rate or charge to be imposed for a conservation district.

ARTICLE 3

REPEALER

NEW SECTION. **Sec. 5301.** The following acts or parts of acts are each repealed:

(1)RCW 24.03.005 (Definitions) and 2020 c 57 s 80, 2015 c 176 s 3101, 2004 c 265 s 1, 2002 c 74 s 4, 1989 c 291 s 3, 1986 c 240 s 1, 1982 c 35 s 72, & 1967 c 235 s 2;

(2)RCW 24.03.009 (Notice by electronic transmission—Consent required—When effective) and 2004 c 265 s 4;

(3)RCW 24.03.010 (Applicability) and 1971 ex.s. c 53 s 1 & 1967 c 235 s 3;

(4)RCW 24.03.015 (Purposes) and 1986 c 240 s 2, 1983 c 106 s 22, & 1967 c 235 s 4;

(5)RCW 24.03.017 (Corporation may elect to have chapter apply to it—Procedure) and 2015 c 176 s 3102, 2004 c 265 s 5, 1982 c 35 s 73, & 1971 ex.s. c 53 s 2;

(6)RCW 24.03.020 (Incorporators) and 2004 c 265 s 6, 1986 c 240 s 3, 1982 c 35 s 74, & 1967 c 235 s 5;

(7)RCW 24.03.025 (Articles of incorporation) and 1987 c 212 s 703, 1982 c 35 s 75, & 1967 c 235 s 6;

(8)RCW 24.03.027 (Filing false statements—Penalty);

(9)RCW 24.03.030 (Limitations) and 1986 c 240 s 4 & 1967 c 235 s 7;

(10)RCW 24.03.035 (General powers) and 1991 c 72 s 42, 1986 c 240 s 5, & 1967 c 235 s 8;

(11)RCW 24.03.040 (Defense of ultra vires) and 1967 c 235 s 9;

(12)RCW 24.03.043 (Indemnification of agents of any corporation authorized);

(13)RCW 24.03.045 (Corporate name) and 2015 c 176 s 3103, 2004 c 265 s 7, 1998 c 102 s 3, 1994 c 211 s 1305, 1989 c 291 s 10, 1987 c 55 s 39, 1986 c 240 s 6, 1982 c 35 s 76, & 1967 c 235 s 10;

(14)RCW 24.03.046 (Reservation of exclusive right to use a corporate name) and 2015 c 176 s 3104, 1993 c 356 s 1, & 1982 c 35 s 77;

(15)RCW 24.03.047 (Registration of corporate name) and 2015 c 176 s 3105, 1994 c 211 s 1306, 1993 c 356 s 2, 1987 c 55 s 40, 1986 c 240 s 7, & 1982 c 35 s 78;

(16)RCW 24.03.048 (Renewal of registration of corporate name) and 2015 c 176 s 3106, 1986 c 240 s 8, & 1982 c 35 s 79;

(17)RCW 24.03.050 (Registered agent) and 2015 c 176 s 3107, 2009 c 202 s 1, 2004 c 265 s 8, 1986 c 240 s 9, 1982 c 35 s 80, 1969 ex.s. c 163 s 1, & 1967 c 235 s 11;

(18)RCW 24.03.055 (Change of registered agent) and 2015 c 176 s 3108, 2004 c 265 s 9, 1993 c 356 s 3, 1986 c 240 s 10, 1982 c 35 s 81, & 1967 c 235 s 12;

(19)RCW 24.03.060 (Service of process on corporation) and 2015 c 176 s 3109, 1986 c 240 s 11, 1982 c 35 s 82, & 1967 c 235 s 13;

(20)RCW 24.03.065 (Members—Member committees) and 2004 c 98 s 1, 1986 c 240 s 12, & 1967 c 235 s 14;

(21)RCW 24.03.070 (Bylaws) and 1991 c 72 s 43, 1986 c 240 s 13, & 1967 c 235 s 15;

(22)RCW 24.03.075 (Meetings of members and committees of members) and 2004 c 98 s 2, 1986 c 240 s 14, & 1967 c 235 s 16;

(23)RCW 24.03.080 (Notice of members' meetings) and 2004 c 265 s 10, 1969 ex.s. c 115 s 1, & 1967 c 235 s 17;

(24)RCW 24.03.085 (Voting) and 2004 c 265 s 11, 1969 ex.s. c 115 s 2, & 1967 c 235 s 18;

(25)RCW 24.03.090 (Quorum) and 1967 c 235 s 19;

(26)RCW 24.03.095 (Board of directors) and 1967 c 235 s 20;

(27)RCW 24.03.100 (Number and election or appointment of directors) and 1986 c 240 s 15 & 1967 c 235 s 21;

(28)RCW 24.03.103 (Removal of directors) and 1986 c 240 s 16;

(29)RCW 24.03.1031 (Judicial removal of directors) and 1999 c 32 s 1;

(30)RCW 24.03.105 (Vacancies) and 2011 c 336 s 655, 1986 c 240 s 17, & 1967 c 235 s 22;

(31)RCW 24.03.110 (Quorum of directors) and 1986 c 240 s 18 & 1967 c 235 s 23;

(32)RCW 24.03.113 (Assent presumed—Procedures for dissent or abstention) and 2004 c 265 s 12 & 1986 c 240 s 19;

(33)RCW 24.03.115 (Committees) and 2011 c 336 s 656, 1986 c 240 s 20, & 1967 c 235 s 24;

(34)RCW 24.03.120 (Place and notice of directors' meetings) and 2004 c 265 s 13, 1986 c 240 s 21, & 1967 c 235 s 25;

(35)RCW 24.03.125 (Officers) and 1986 c 240 s 22 & 1967 c 235 s 26;

(36)RCW 24.03.127 (Duties of a director) and 1986 c 240 s 23;

(37)RCW 24.03.130 (Removal of officers) and 1967 c 235 s 27;

(38)RCW 24.03.135 (Required documents in the form of a record—Inspection—Copying) and 2004 c 265 s 14, 1986 c 240 s 24, & 1967 c 235 s 28;

(39)RCW 24.03.140 (Loans to directors and officers prohibited) and 1967 c 235 s 29;

(40)RCW 24.03.145 (Filing of articles of incorporation) and 2015 c 176 s 3110, 2002 c 74 s 7, 1982 c 35 s 83, & 1967 c 235 s 30;

(41)RCW 24.03.150 (Effect of filing the articles of incorporation) and 1986 c 240 s 25, 1982 c 35 s 84, & 1967 c 235 s 31;

(42)RCW 24.03.155 (Organization meetings) and 2004 c 265 s 15, 1986 c 240 s 26, & 1967 c 235 s 32;

(43)RCW 24.03.160 (Right to amend articles of incorporation) and 1967 c 235 s 33;

(44)RCW 24.03.165 (Procedure to amend articles of incorporation) and 2004 c 265 s 16, 1986 c 240 s 27, & 1967 c 235 s 34;

(45)RCW 24.03.170 (Articles of amendment) and 2004 c 265 s 17, 1982 c 35 s 85, & 1967 c 235 s 35;

(46)RCW 24.03.175 (Filing of articles of amendment) and 2015 c 176 s 3111, 2002 c 74 s 8, 1982 c 35 s 86, & 1967 c 235 s 36;

(47)RCW 24.03.180 (Effect of filing of articles of amendment) and 2015 c 176 s 3112, 1986 c 240 s 28, 1982 c 35 s 87, & 1967 c 235 s 37;

(48)RCW 24.03.183 (Restated articles of incorporation) and 2015 c 176 s 3113, 2004 c 265 s 18, 2002 c 74 s 9, 1986 c 240 s 29, & 1982 c 35 s 88;

(49)RCW 24.03.185 (Procedure for merger) and 1986 c 240 s 30 & 1967 c 235 s 38;

(50)RCW 24.03.190 (Procedure for consolidation) and 1986 c 240 s 31 & 1967 c 235 s 39;

(51)RCW 24.03.195 (Approval of merger or consolidation) and 2004 c 265 s 19, 1986 c 240 s 32, & 1967 c 235 s 40;

(52)RCW 24.03.200 (Articles of merger or consolidation) and 2015 c 176 s 3114, 2004 c 265 s 20, 2002 c 74 s 10, 1986 c 240 s 33, 1982 c 35 s 89, & 1967 c 235 s 41;

(53)RCW 24.03.205 (Merger or consolidation—When effective) and 2015 c 176 s 3115, 1986 c 240 s 34, 1982 c 35 s 90, & 1967 c 235 s 42;

(54)RCW 24.03.207 (Merger or consolidation of domestic and foreign corporation) and 2015 c 176 s 3116, 2004 c 265 s 21, 1986 c 240 s 35, & 1982 c 35 s 91;

(55)RCW 24.03.210 (Effect of merger or consolidation) and 1967 c 235 s 43;

(56)RCW 24.03.215 (Sale, lease, exchange, or other disposition of assets not in the ordinary course of business) and 2004 c 265 s 22, 1986 c 240 s 36, & 1967 c 235 s 44;

(57)RCW 24.03.217 (Sale, lease, exchange, or disposition of assets in course of business—Mortgage and pledge of assets) and 1986 c 240 s 37;

(58)RCW 24.03.220 (Voluntary dissolution) and 2004 c 265 s 23, 1986 c

240 s 38, 1982 c 35 s 92, & 1967 c 235 s 45;

(59)RCW 24.03.225 (Distribution of assets) and 1967 c 235 s 46;

(60)RCW 24.03.230 (Plan of distribution) and 2011 c 336 s 657, 2004 c 265 s 24, 1969 ex.s. c 115 s 3, & 1967 c 235 s 47;

(61)RCW 24.03.235 (Revocation of voluntary dissolution proceedings) and 2004 c 265 s 25 & 1967 c 235 s 48;

(62)RCW 24.03.240 (Articles of dissolution) and 2004 c 265 s 26, 1993 c 356 s 4, 1982 c 35 s 93, & 1967 c 235 s 49;

(63)RCW 24.03.245 (Filing of articles of dissolution) and 2015 c 176 s 3117, 2002 c 74 s 11, 1982 c 35 s 94, & 1967 c 235 s 50;

(64)RCW 24.03.250 (Involuntary dissolution) and 1969 ex.s. c 163 s 2 & 1967 c 235 s 51;

(65)RCW 24.03.255 (Notification to attorney general) and 1982 c 35 s 95, 1969 ex.s. c 163 s 3, & 1967 c 235 s 52;

(66)RCW 24.03.260 (Venue and process) and 1967 c 235 s 53;

(67)RCW 24.03.266 (Dissolution of a nonprofit corporation—Superior courts) and 2010 c 212 s 1;

(68)RCW 24.03.271 (Dissolution of a nonprofit corporation—Venue—Proceedings—Court's authority—Distribution of assets) and 2010 c 212 s 2;

(69)RCW 24.03.276 (Dissolution of a nonprofit corporation—Decree) and 2010 c 212 s 3;

(70)RCW 24.03.295 (Filing of decree of dissolution) and 1986 c 240 s 40 & 1967 c 235 s 60;

(71)RCW 24.03.300 (Survival of remedy after dissolution—Extension of duration of corporation) and 2015 c 176 s 3118, 1986 c 240 s 41, 1982 c 35 s 96, & 1967 c 235 s 61;

(72)RCW 24.03.302 (Administrative dissolution—Reinstatement—Survival of actions) and 2015 c 176 s 3119, 1994 c 287 s 8, 1993 c 356 s 5, 1987 c 117 s 3, 1986 c 240 s 42, 1982 c 35 s 97, 1971 ex.s. c 128 s 1, & 1969 ex.s. c 163 s 9;

(73)RCW 24.03.305 (Registration of foreign corporation—Authority to conduct

affairs) and 2015 c 176 s 3120, 1993 c 181 s 12, 1986 c 240 s 43, & 1967 c 235 s 62;

(74)RCW 24.03.310 (Powers of foreign corporation—Effect of registration—Governing law) and 2015 c 176 s 3121 & 1967 c 235 s 63;

(75)RCW 24.03.315 (Corporate name of foreign corporation—Fictitious name) and 2015 c 176 s 3122, 1982 c 35 s 98, & 1967 c 235 s 64;

(76)RCW 24.03.325 (Foreign registration statement) and 2015 c 176 s 3123, 2002 c 74 s 12, 1986 c 240 s 45, & 1967 c 235 s 66;

(77)RCW 24.03.332 (Certificate of authority as insurance company—Filing of records) and 2004 c 265 s 28 & 1998 c 23 s 12;

(78)RCW 24.03.334 (Certificate of authority as insurance company—Registration or reservation of name) and 1998 c 23 s 13;

(79)RCW 24.03.335 (Effect of foreign registration statement—Right of state to terminate registration) and 2015 c 176 s 3124, 1982 c 35 s 100, & 1967 c 235 s 68;

(80)RCW 24.03.340 (Registered agent of foreign corporation) and 2015 c 176 s 3125, 2004 c 265 s 29, 1982 c 35 s 101, & 1967 c 235 s 69;

(81)RCW 24.03.345 (Change of registered agent of foreign corporation) and 2015 c 176 s 3126, 2004 c 265 s 30, 1993 c 356 s 6, 1986 c 240 s 47, 1982 c 35 s 102, & 1967 c 235 s 70;

(82)RCW 24.03.350 (Service on foreign corporation) and 2015 c 176 s 3127, 2011 c 336 s 658, 1986 c 240 s 48, 1982 c 35 s 103, & 1967 c 235 s 71;

(83)RCW 24.03.360 (Merger of foreign corporation authorized to conduct affairs in this state) and 1986 c 240 s 49 & 1967 c 235 s 73;

(84)RCW 24.03.365 (Amended foreign registration statement) and 2015 c 176 s 3128, 2004 c 265 s 31, & 1967 c 235 s 74;

(85)RCW 24.03.370 (Withdrawal of foreign corporation) and 2015 c 176 s 3129, 1993 c 356 s 7, 1982 c 35 s 104, & 1967 c 235 s 75;

(86)RCW 24.03.380 (Termination of registration) and 2015 c 176 s 3130, 2004 c 265 s 32, 1986 c 240 s 50, 1982 c 35 s 106, & 1967 c 235 s 77;

(87)RCW 24.03.390 (Conducting affairs without registering) and 2015 c 176 s 3131, 1986 c 240 s 52, & 1967 c 235 s 79;

(88)RCW 24.03.395 (Annual report of domestic and foreign corporations) and 2015 c 176 s 3132, 1993 c 356 s 10, 1989 c 291 s 2, 1987 c 117 s 4, 1986 c 240 s 53, 1982 c 35 s 108, & 1967 c 235 s 80;

(89)RCW 24.03.405 (Applicable fees, charges, and penalties) and 2015 c 176 s 3133, 2010 1st sp.s. c 29 s 3, 1993 c 269 s 5, 1991 c 223 s 1, 1987 c 117 s 5, 1986 c 240 s 55, 1982 c 35 s 110, 1981 c 230 s 5, 1969 ex.s. c 163 s 5, & 1967 c 235 s 82;

(90)RCW 24.03.417 (Fees for services by secretary of state);

(91)RCW 24.03.420 (Penalties imposed upon corporation) and 1969 ex.s. c 163 s 7 & 1967 c 235 s 85;

(92)RCW 24.03.425 (Penalties imposed upon directors and officers) and 2015 c 176 s 3134, 2004 c 265 s 34, & 1967 c 235 s 86.

(93)RCW 24.03.430 (Interrogatories by secretary of state) and 2004 c 265 s 35, 1982 c 35 s 112, & 1967 c 235 s 87;

(94)RCW 24.03.435 (Confidential nature of information disclosed by interrogatories) and 1982 c 35 s 113 & 1967 c 235 s 88;

(95)RCW 24.03.440 (Power and authority of secretary of state) and 1982 c 35 s 114 & 1967 c 235 s 89;

(96)RCW 24.03.445 (Duty of secretary of state to file—Review of refusal to file) and 2015 c 176 s 3135, 2004 c 265 s 36, 1986 c 240 s 56, 1982 c 35 s 115, & 1967 c 235 s 90;

(97)RCW 24.03.455 (Greater voting requirements) and 1967 c 235 s 92;

(98)RCW 24.03.460 (Waiver of notice) and 2004 c 265 s 38 & 1967 c 235 s 93;

(99)RCW 24.03.465 (Action by members or directors without a meeting) and 2004 c 265 s 39 & 1967 c 235 s 94;

(100)RCW 24.03.470 (Unauthorized assumption of corporate powers) and 1967 c 235 s 95;

(101)RCW 24.03.480 (Postsecondary education loans—Interest rates) and 1989 c 166 s 1;

(102)RCW 24.03.490 (Public benefit nonprofit corporation designation established) and 1989 c 291 s 4;

(103)RCW 24.03.500 (Public benefit nonprofit corporations—Temporary designation) and 1989 c 291 s 5;

(104)RCW 24.03.510 (Public benefit nonprofit corporations—Application) and 1989 c 291 s 6;

(105)RCW 24.03.520 (Public benefit nonprofit corporations—Renewal) and 1989 c 291 s 7;

(106)RCW 24.03.530 (Public benefit nonprofit corporations—Fees) and 1989 c 291 s 8;

(107)RCW 24.03.540 (Public benefit nonprofit corporations—Removal of status) and 1989 c 291 s 9;

(108)RCW 24.03.550 (Host home programs—Registration) and 2016 c 166 s 3;

(109)RCW 24.03.900 (Short title) and 1967 c 235 s 1;

(110)RCW 24.03.905 (Savings—1967 c 235) and 1967 c 235 s 96;

(111)RCW 24.03.915 (Notice to existing corporations) and 1982 c 35 s 117, 1969 ex.s. c 163 s 8, & 1967 c 235 s 98;

(112)RCW 24.03.920 (Repealer—Exception) and 1967 c 235 s 100; and

(113)RCW 24.03.925 (Effective date—1967 c 235) and 1967 c 235 s 99.

PART VI

IMPLEMENTATION

NEW SECTION. **Sec. 6101.** CODIFICATION. Sections 1101 through 4203 of this act constitute a new chapter in Title 24 RCW.

NEW SECTION. **Sec. 6102.** 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. 6103.** EFFECTIVE DATE. Except for section 5204 of this act, this act takes effect January 1, 2022.

NEW SECTION. **Sec. 6104.** EFFECTIVE DATE. Section 5204 of this act takes effect July 1, 2022."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5036 Prime Sponsor, Committee on Ways & Means: Concerning the release of incarcerated individuals from total confinement prior to the expiration of a sentence. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 9.94A.030 and 2020 c 296 s 2, 2020 c 252 s 4, and 2020 c 137 s 1 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 as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

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

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

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "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.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) 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. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recidivist offense as provided in RCW 9.94A.640(3)(b) and 9.96.060(6)(c).

(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.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "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.

(16) "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.

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

(18) "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 custody, the number of actual hours or days of community 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.

(19) "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.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) 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.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which

detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location.

(25) "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.

(26) "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), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); 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.

(27) "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.

(28) "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.

(29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is

confined in a private residence twenty-four hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

(30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(31) "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.

(32) "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) Sexual exploitation;

(p) 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;

(q) 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;

(r) Any other class B felony offense with a finding of sexual motivation;

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(t) 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;

(u) (i) A prior conviction for indecent liberties under RCW 9A.44.100(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;

(v) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

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

(34) "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. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender," (~~and~~) "defendant," and "individual" are used interchangeably, unless the context indicates otherwise.

(35) "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, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program or the graduated reentry program, 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, electronic monitoring, and a combination

of work crew, electronic monitoring, and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Hate Crime (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "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, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37) (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.

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student

receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(40) "Public school" has the same meaning as in RCW 28A.150.010.

(41) "Recidivist offense" means a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime including, but not limited to:

(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);

(b) Cyberstalking, RCW 9.61.260(3)(a);

(c) Harassment, RCW 9A.46.020(2)(b)(i);

(d) Indecent exposure, RCW 9A.88.010(2)(c);

(e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

(f) Telephone harassment, RCW 9.61.230(2)(a); and

(g) Violation of a no-contact or protection order, RCW 26.50.110(5).

(42) "Repetitive domestic violence offense" means any:

(a) (i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, ~~((26.10))~~ 26.26A, 26.26B, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal

conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(43) "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.

(44) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(45) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony 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.

(46) "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.

(47) "Sex offense" means:

(a) (i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(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.080;

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

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion;

(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.

(48) "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.

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

(50) "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.

(51) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(52) "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.

(53) "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.

(54) "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.

(55) "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.

(56) "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.

(57) "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.

(58) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 2. RCW 9.94A.501 and 2020 c 275 s 1 are each amended to read as follows:

(1) The department shall supervise the following ~~((offenders))~~ individuals who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) ~~((Offenders))~~ Individuals convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes; and

(iv) Violation of RCW 9A.44.132(2) (failure to register); and

(b) ~~((Offenders))~~ Individuals who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been pleaded and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011.

(2) ~~((Misdemeanor))~~ Individuals convicted of misdemeanor and gross misdemeanor ~~((offenders))~~ offenses supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every individual convicted of a felony ~~((offender))~~ and sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the ~~((offender))~~ individual as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an ~~((offender))~~ individual sentenced to community custody regardless of risk classification if the ~~((offender))~~ individual:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e)(i) Has a current conviction for a domestic violence felony offense where domestic violence has been pleaded and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence was pleaded and proven after August 1, 2011. This subsection (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

(ii) Has a current conviction for a domestic violence felony offense where domestic violence was pleaded and proven. The state and its officers, agents, and employees shall not be held criminally or civilly liable for its supervision of an

~~((offender))~~ individual under this subsection (4)(e)(ii) unless the state and its officers, agents, and employees acted with gross negligence;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, or 9.94A.711;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department shall supervise any ~~((offender who is))~~ individual released by the indeterminate sentence review board ~~((and))~~ who was sentenced to community custody or subject to community custody under the terms of release.

(6) The department shall supervise any individual granted conditional commutation pursuant to RCW 9.94A.885.

(7) The department is not authorized to, and may not, supervise any ~~((offender))~~ individual sentenced to a term of community custody or any probationer unless the ~~((offender))~~ individual or probationer is one for whom supervision is required under this section ~~((or RCW 9.94A.5011))~~.

~~((7))~~ (8) The department shall conduct a risk assessment for every individual convicted of a felony ~~((offender))~~ and sentenced to a term of community custody who may be subject to supervision under this section ~~((or RCW 9.94A.5011))~~.

~~((8))~~ (9) The period of time the department is authorized to supervise an ~~((offender))~~ individual under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.

~~((9))~~ (10) The period of time the department is authorized to supervise an ~~((offender))~~ individual under this section may be reduced by the earned award of supervision compliance credit pursuant to RCW 9.94A.717.

Sec. 3. RCW 9.94A.565 and 1994 c 1 s 5 are each amended to read as follows:

(1) Nothing in this chapter ~~((1, Laws of 1994))~~ or chapter 10.95 RCW shall ever

be interpreted or construed as to reduce or eliminate the power of the governor to grant a pardon or clemency to any ~~((offender))~~ individual on an individual case-by-case basis. However, the people recommend that ~~((any offender))~~:

(a) Any individual subject to total confinement for life without the possibility of parole not be considered for release until the ~~((offender))~~ individual has ~~((reached the age of at least sixty years old and has))~~ been judged to ~~((be))~~ no longer be a threat to society ~~((The people further recommend that sex offenders))~~ and has served at least 20 years in total confinement or 25 years in total confinement if the individual was sentenced pursuant to chapter 10.95 RCW;

(b) Individuals who have been convicted of a sex offense be held to the utmost scrutiny under this subsection regardless of age; and

(c) Release take the form of a conditional commutation that includes a period of law-abiding behavior in the community.

(2) Nothing in this section shall ever be interpreted or construed to grant any release for the purpose of reducing prison overcrowding. Furthermore, the governor shall provide twice yearly reports on the activities and progress of ~~((offenders))~~ individuals subject to total confinement for life without the possibility of parole who are released through executive action during his or her tenure. These reports shall continue for not less than ~~((ten))~~ 10 years after the release of the ~~((offender))~~ individual or upon the death of the released ~~((offender))~~ individual.

Sec. 4. RCW 9.94A.633 and 2012 1st sp.s. c 6 s 2 are each amended to read as follows:

(1)(a) An ~~((offender))~~ individual who violates any condition or requirement of a sentence may be sanctioned by the court with up to ~~((sixty))~~ 60 days' confinement for each violation or by the department with up to ~~((thirty))~~ 30 days' confinement as provided in RCW 9.94A.737.

(b) In lieu of confinement, an ~~((offender))~~ individual may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling

sessions, supervision enhanced through electronic monitoring, or any other community-based sanctions.

(2) If an ~~((offender))~~ individual was under community custody pursuant to one of the following statutes, the ~~((offender))~~ individual may be sanctioned as follows:

(a) If the ~~((offender))~~ individual was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728, the ~~((offender))~~ individual may be transferred 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.

(b) If the ~~((offender))~~ individual was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the ~~((offender))~~ individual may be sanctioned in accordance with that section.

(c) If the ~~((offender))~~ individual was sentenced under the parenting sentencing alternative set out in RCW 9.94A.655, the ~~((offender))~~ individual may be sanctioned in accordance with that section.

(d) If the ~~((offender))~~ individual was sentenced under the special sex offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the ~~((offender))~~ individual committed to serve the original sentence of confinement.

(e) If the ~~((offender))~~ individual was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the ~~((offender))~~ individual may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(f) If ~~((a))~~ an individual convicted of a sex ~~((offender))~~ offense was sentenced pursuant to RCW 9.94A.507, the ~~((offender))~~ individual may be transferred 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.

(g) If the individual was granted conditional commutation pursuant to RCW 9.94A.885, the individual may be

transferred 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.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an ~~((offender))~~ individual who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions.

(4) The parole or probation of an ~~((offender))~~ individual who is charged with a new felony offense may be suspended and the ~~((offender))~~ individual placed in total confinement pending disposition of the new criminal charges if:

(a) The ~~((offender))~~ individual is on parole pursuant to RCW 9.95.110(1); or

(b) The ~~((offender))~~ individual is being supervised pursuant to RCW 9.94A.745 and is on parole or probation pursuant to the laws of another state.

Sec. 5. RCW 9.94A.728 and 2018 c 166 s 2 are each amended to read as follows:

(1) No ~~((person))~~ individual 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:

(a) An ~~((offender))~~ individual may earn early release time as authorized by RCW 9.94A.729;

(b) An ~~((offender))~~ individual may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, ~~((offenders))~~ individuals may leave a correctional facility when in the custody of a corrections officer or officers;

(c)(i) The secretary may authorize an extraordinary medical placement for an

~~((offender))~~ individual when all of the following conditions exist:

(A) The ~~((offender))~~ individual has a medical condition that is chronic or serious and is expected to require costly care or treatment;

(B) The ~~((offender poses a))~~ individual has been assessed as low risk to the community ~~((because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so))~~ at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An ~~((offender))~~ individual sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) The secretary shall require electronic monitoring for all ~~((offenders))~~ individuals in extraordinary medical placement unless the electronic monitoring equipment is detrimental to the individual's health, interferes with the function of the ~~((offender's))~~ individual's medical equipment, or results in the loss of funding for the ~~((offender's))~~ individual's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed. The requirement for electronic monitoring shall be waived if the medical condition as certified by the individual's treating physician prevents the individual from being independently mobile.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) The governor, upon recommendation from the clemency and pardons board, may grant ~~((an extraordinary))~~ :

(i) Extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances; or

(ii) Conditional commutation pursuant to section 8 of this act;

(e) No more than the final ~~((twelve))~~ 12 months of the ~~((offender's))~~ individual's term of confinement may be served in partial confinement for aiding the ~~((offender))~~ individual with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to RCW 9.94A.729(5) (d);

(f) No more than the final six months of the ~~((offender's))~~ individual's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733;

(g) The governor may pardon any ~~((offender))~~ individual;

(h) The department may release an ~~((offender))~~ individual from confinement any time within ~~((ten))~~ 10 days before a release date calculated under this section;

(i) An ~~((offender))~~ individual 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;

(j) Notwithstanding any other provisions of this section, an ~~((offender))~~ individual 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; and

(k) Any ~~((person))~~ individual convicted of one or more crimes committed prior to the person's ~~((eighteenth))~~ 18th birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) ~~((Offenders))~~ Individuals residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

Sec. 6. RCW 9.94A.880 and 2011 c 336 s 335 are each amended to read as follows:

(1) The clemency and pardons board is established as a board within the office of the governor. The board consists of ~~((five))~~ 10 members appointed by the governor, subject to confirmation by the senate.

(2) Board membership must consist of the following:

(a) A representative of a statewide or local organization representing communities of color or race equity;

(b) A representative of an agency representing crime victims;

(c) A representative of an association, community organization, or advocacy group with experience or interest in the formerly incarcerated with successful community reentry;

(d) A representative of a faith-based organization with interest and experience in successful community reentry;

(e) A representative of a statewide organization representing criminal defense lawyers;

(f) A law enforcement professional;

(g) A representative of a statewide organization representing prosecuting attorneys;

(h) A person with experience and interest in tribal affairs;

(i) A behavioral health professional; and

(j) A retired superior court judge.

(3) Board members must understand the principles of racial equity and restorative justice. Board members must also be knowledgeable about the impact of crime upon victims and communities.

(4) Members of the board shall serve terms of ~~((four))~~ five years ~~((and))~~, but may serve more than one term until their successors are appointed and confirmed. ~~((However, the))~~ The governor shall stagger the initial terms ~~((by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years))~~ so that no more than three members are up for appointment in any given year.

~~((3))~~ (5) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

~~((4))~~ (6) Members of the board shall (receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended) each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, unless waived by the member. All members shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(7) The board shall be funded adequate personnel to implement and maintain functional operations such as support, records, victim liaisons, and information technology.

~~((5))~~ (8) The attorney general shall provide (a staff as needed for the operation of) legal counsel to the board.

Sec. 7. RCW 9.94A.885 and 2009 c 325 s 6 and 2009 c 138 s 4 are each reenacted and amended to read as follows:

(1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department and make recommendations to the governor for ((review and commutation)):

(a) Commutation of sentences and pardoning of ((offenders)) individuals in extraordinary cases((r)); and ((shall make recommendations thereon to the governor))

(b) Conditional commutation of sentences pursuant to section 8 of this act.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to engaging in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency or conditional commutation under subsection (1) of this section until a public hearing has been held on the petition. The board shall consider statements of

victims and survivors of victims presented as set forth in RCW 7.69.032, as well as any statements from the law enforcement agency or agencies that conducted the investigation.

(4) (a) The prosecuting attorney of the county where the conviction was obtained shall be notified at least ((thirty)) 90 days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the ((thirty-day)) 90-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. ((The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing.))

(b) To facilitate victim and survivor of victim involvement, county prosecutor's offices shall make reasonable efforts to ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence. In the event that no known victim or survivor of the victim is known or identified for the panel, the county prosecutor's office shall be given reasonable time to certify to the panel that it has exhausted all reasonable efforts in locating and providing contact information to the panel. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the ((offender)) individual seeking clemency or commutation. ((The board shall consider statements presented as set forth in RCW 7.69.032.))

(c) This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

(5) (a) The board may recommend conditions of commutation for any individual released pursuant to this section, including a term of community custody up to the length of the court-imposed term of incarceration, partial confinement up to six months, restrictions on travel, no contact with

certain persons or classes of persons, restrictions on the type of employment and any other restrictions that the board determines to be reasonable and appropriate, or any other condition which provides for community protection from the released individual.

(b) The department shall monitor the released individual's compliance with conditions of community custody imposed by the court or recommended by the board. Any violation of conditions of community custody is subject to the provisions of this chapter.

(6) Once granted, the governor may not revoke an order granting conditional commutation.

(7) Members of the board are not civilly liable for decisions made while performing their duties.

NEW SECTION. Sec. 8. A new section is added to chapter 9.94A RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, an individual may petition the board for conditional commutation if the individual:

(a) Is not subject to the jurisdiction of the indeterminate sentence review board pursuant to RCW 9.94A.730 or 9.94A.507, or the individual's offense was committed prior to July 1, 1984;

(b) Has served at least 20 consecutive years of total confinement except:

(i) An individual who was sentenced as a persistent offender that included a conviction for robbery in the second degree as their third conviction towards being designated as a persistent offender may petition after serving 15 consecutive years of total confinement; and

(ii) An individual sentenced pursuant to chapter 10.95 RCW may petition only after serving 25 consecutive years of total confinement;

(c) Consents to a review of all of his or her medical, mental

health, and department files by the board; and

(d) Does not have any current appeals pending or collateral attacks pending on the case for which the individual is seeking conditional commutation.

(2) No later than five years prior to the date the individual will be eligible

to petition for release, the department shall:

(a) Notify the individual regarding his or her eligibility under this section; and

(b) Conduct an assessment of the individual and identify programming and services that would be appropriate to prepare the individual for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(3) If the individual has a prior known or diagnosed decreased cognitive function or developmental disability, or a decreased cognitive function or developmental disability is determined during the assessment process as outlined in subsection (2)(b) of this section, the department shall assist the individual with the process of applying for review by the board or refer to additional services for such assistance.

(4) No later than 180 days from the date that the individual submits his or her petition for conditional commutation to the board, the department shall conduct, and the individual shall participate in, an examination of the individual, incorporating methodologies that are evidence-based, normed on the specific gender of the individual, and recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the individual will engage in future criminal behavior if released on conditions to be set by the board. The board may consider an individual's failure to participate in an evaluation under this subsection in determining whether to release the individual.

(5) The board shall recommend the individual be released under such affirmative and other conditions as the panel determines appropriate, unless the panel determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the individual will commit new criminal law violations if released.

(6) The board may take any of the following actions: Deny a petition without a hearing because the individual does not meet the initial criteria for filing a petition; or conduct a hearing in accordance with RCW 9.94A.885 to consider additional information, and

then deny the petition or recommend conditional commutation to the governor.

(7) In making its decision, the board shall consider, if available, the following factors and information:

- (a) Public safety;
- (b) The individual's criminal history;
- (c) The nature and circumstances of the offenses committed, including the current and past offenses;
- (d) The individual's social and medical history;
- (e) The individual's acceptance of responsibility, remorse, and atonement. If the individual submitted an Alford plea, the impact that may have on an individual's ability to provide evidence of remorse, atonement, and self-reflection in relation to the offense committed;
- (f) Evidence of the individual's rehabilitation, including behavior while incarcerated, job history, education participation in available rehabilitative program and treatment, and infraction history;
- (g) Statements of correctional staff, program supervisors, and volunteer facilitators regarding the individual;
- (h) Input from the victims of the crime;
- (i) Input from the police and prosecutors in the jurisdictions where the individual's crimes were committed;
- (j) Input from persons in the community pledging their support of the individual, if released;
- (k) The available resources in the community to help the individual transition to life outside of prison;
- (l) A risk assessment and psychological evaluation provided by the department;
- (m) The sentencing judge's analysis in imposing an exceptional sentence, if any; and
- (n) Any other relevant factors.

(8) Further, the board shall consider a release plan presented by the individual showing where the individual will reside and how he or she will support himself or herself during the first year after his or her release. The department shall independently review

the proposed release plan and make an independent evaluation to ensure the individual is not released to an area where the victim resides or that impacts community safety.

(9) If the board recommends commutation or denies the petition, it shall specify the reasons for the decision.

(10) The conditions for conditional commutation may include: Partial confinement for up to six months, regular drug and/or alcohol testing, no violations of law, restrictions on travel, no contact with certain individuals or classes of individuals, restrictions on the type of employment and any other restrictions that the board determines to be reasonable and appropriate, or any other condition which provides for community protection from the released individual.

(11) An individual whose petition for conditional commutation is denied may file a new petition for conditional commutation three years from the date of denial or at an earlier date as may be set by the board.

(12) The individual does not have a right to appointed counsel. Both lawyers and nonlawyers may assist the individual in the preparation of his or her petition and at the hearing.

(13) All information contained in a petition or that is submitted to the board is subject to public disclosure.

(14) The board may adopt rules setting out criteria and procedures for the review of petitions under this section and RCW 9.94A.885 as appropriate.

(15) For purposes of this section, "board" means the clemency and pardons board.

NEW SECTION. Sec. 9. (1) Chapter 187, Laws of 2019 removed robbery in the second degree as a most serious offense in sentencing an individual as a persistent offender. At that time, the legislature declined to require resentencing of individuals serving a life sentence as the result of a conviction for robbery in the second degree. The legislature recognizes the need to balance considerations that may have gone into the original charging decision and the inequities that may have resulted from including robbery in the second degree as a third strike offense.

(2) In exercising its duties under RCW 9.94A.885 and section 8 of this act, the clemency and pardons board shall give priority consideration to individuals who petition for conditional commutation and who have a current or past conviction for robbery in the second degree that was used as a basis for a finding that the individual was a persistent offender.

(3) This section expires December 31, 2024."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5044 Prime Sponsor, Committee on Early Learning & K-12 Education: Concerning professional learning, equity, cultural competency, and dismantling institutional racism in the public school system. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Education.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that state resources have been invested to: (a) Identify model standards for cultural competency; (b) incorporate these cultural competency standards into both the standards for effective teaching and the standards of practice for paraeducators; (c) develop cultural competency training programs for school district staff from paraeducators to administrators; and (d) develop a plan for the creation and delivery of cultural competency training for school board directors and superintendents.

(2) The legislature plans to continue the important work of dismantling institutional racism in public schools and recognizes the importance of increasing equity, diversity, inclusion, antiracism, and cultural competency training throughout the entire public school system by providing training programs for classified staff, certificated instructional staff, certificated administrative staff, superintendents, and school directors that will be provided in an ongoing manner.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.415 RCW to read as follows:

The definitions in this section apply throughout sections 3 and 5 through 7 of this act and RCW 28A.410.260 and 28A.415.445 unless the context clearly requires otherwise.

(1) "Cultural competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students.

(2) "Diversity" describes the presence of similarities and differences within a given setting, collective, or group based on multiple factors including race and ethnicity, gender identity, sexual orientation, disability status, age, educational status, religion, geography, primary language, culture, and other characteristics and experiences.

(3) "Equity" includes developing, strengthening, and supporting procedural and outcome fairness in systems, procedures, and resource distribution mechanisms to create equitable opportunities for all individuals. The term also includes eliminating barriers that prevent the full participation of individuals and groups.

(4) "Inclusion" describes intentional efforts and consistent sets of actions to create and sustain a sense of respect, belonging, safety, and attention to individual needs and backgrounds that ensure the full access to engagement and participation in available activities and opportunities.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.345 RCW to read as follows:

(1) The Washington state school directors' association shall:

(a) Develop cultural competency, diversity, equity, and inclusion standards for school director governance;

(b) Collaborate with the Washington professional educator standards board to compare and align the standards for school director governance developed under (a) of this subsection with the standards of practice developed under RCW 28A.410.260. The review must include the educational opportunity gap oversight and accountability committee and may include the office of equity established under RCW 43.06D.020; and

(c) Maintain the final cultural competency, diversity, equity, and inclusion standards for school director governance on its website at no cost to school districts.

(2) By November 1, 2030, and every 10 years thereafter, the Washington state school directors' association shall review the definitions in section 2 of this act and the cultural competency, diversity, equity, and inclusion standards for school director governance developed under subsection (1) of this section and report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature with any recommendations for revising the definitions in section 2 of this act.

(3) For purposes of this section, "cultural competency," "diversity," "equity," and "inclusion" have the same meaning as in section 2 of this act.

Sec. 4. RCW 28A.410.260 and 2009 c 468 s 5 are each amended to read as follows:

~~(1) ((The professional educator standards board, in consultation and collaboration with the achievement gap oversight and accountability committee established under RCW 28A.300.136, shall identify a list of model standards for cultural competency and make recommendations to the education committees of the legislature on the strengths and weaknesses of those standards.~~

~~(2))~~ The Washington professional educator standards board shall:

(a) Develop or update cultural competency, diversity, equity, and inclusion standards of practice for preparation, continuing education, and other training of school district staff;

(b) Collaborate with the Washington state school directors' association to compare and align the standards of practice developed under (a) of this subsection with the standards of governance developed under section 3 of this act. The review must include the educational opportunity gap oversight and accountability committee and may include the office of equity established under RCW 43.06D.020; and

(c) Post on its public website the cultural competency, diversity, equity, and inclusion standards of practice for school district staff.

(2) The Washington professional educator standards board shall develop and periodically update rubrics to evaluate the alignment of training and professional development programs and related materials with the cultural competency, diversity, equity, and inclusion standards of practice for school district staff developed under subsection (1) of this section.

(3) By November 1, 2030, and every 10 years thereafter, the Washington professional educator standards board shall review the definitions in section 2 of this act and the cultural competency, diversity, equity, and inclusion standards of practice for school district staff developed under subsection (1) of this section and report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature any recommendations for revising the definitions in section 2 of this act.

(4) For ((the)) purposes of this section, "cultural ((competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students)) competency," "diversity," "equity," and "inclusion" have the same meaning as in section 2 of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.345 RCW to read as follows:

(1) The Washington state school directors' association shall identify or develop and periodically update governance training programs that align with the cultural competency, diversity, equity, and inclusion standards for school director governance developed under section 3 of this act. The governance training programs must also include building government-to-government relationships with federally recognized tribes, multicultural education, and principles of English language acquisition. Governance training programs may be developed in collaboration with other entities.

(2) Beginning with the 2022 calendar year, the Washington state school directors' association shall provide a governance training program identified or developed under subsection (1) of this section at the frequency necessary for school directors to meet the requirement in section 7 of this act.

(3) For purposes of this section, "cultural competency," "diversity," "equity," and "inclusion" have the same meaning as in section 2 of this act.

NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.410 RCW to read as follows:

(1) In establishing policies and requirements for the preparation and certification of educators under RCW 28A.410.210, the Washington professional educator standards board shall require that the programs of courses, requirements, and other activities leading to educator certification incorporate the cultural competency, diversity, equity, and inclusion standards of practice developed under RCW 28A.410.260 and include the foundational elements of cultural competence, focusing on multicultural education and principles of English language acquisition, including information regarding best practices to implement the tribal history and culture curriculum.

(2) For purposes of this section, "cultural competency," "diversity," "equity," and "inclusion" have the same meaning as in section 2 of this act.

NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.343 RCW to read as follows:

(1) Except as provided otherwise by this subsection (1), beginning with the 2022 calendar year, each member of a board of directors shall complete a governance training program once per term of elected office. If the director is appointed or elected to a first term of office, the director must complete a governance training required by this subsection (1) within two years of appointment or certification of the election in which they were elected.

(2) Governance training programs completed by directors in accordance with subsection (1) of this section must be aligned with the cultural competency, diversity, equity, and inclusion standards for school director governance developed under section 3 of this act and provided by the Washington state school directors' association.

(3) For purposes of this section, "cultural competency," "diversity," "equity," and "inclusion" have the same meaning as in section 2 of this act.

Sec. 8. RCW 28A.415.445 and 2019 c 360 s 3 are each amended to read as follows:

(1) Beginning in the 2020-21 school year, and every other school year thereafter, school districts must use one of the professional learning days funded under RCW 28A.150.415 to train school district staff in one or more of the following topics: Social-emotional learning, trauma-informed practices, using the model plan developed under RCW 28A.320.1271 related to recognition and response to emotional or behavioral distress, consideration of adverse childhood experiences, mental health literacy, antibullying strategies, or culturally sustaining practices.

(2)(a) In the 2021-22 school year, school districts must use one of the professional learning days funded under RCW 28A.150.415 to train school district staff in one or more of the following topics: Cultural competency, diversity, equity, or inclusion.

(b) Beginning in the 2023-24 school year, and every other school year thereafter, school districts must use one of the professional learning days funded under RCW 28A.150.415 to provide to school district staff a variety of opportunities for training, professional development, and professional learning aligned with the cultural competency, equity, diversity, and inclusion

standards of practice developed by the Washington professional educator standards board under RCW 28A.410.260. Alignment with the standards of practice must be evaluated using the rubrics developed under RCW 28A.410.260. The opportunities must also include training on multicultural education and principles of English language acquisition.

(3) For the purposes of this section:

(a) "Cultural competency," "diversity," "equity," and "inclusion" have the same meaning as in section 2 of this act.

(b) "School district staff" includes classified staff, certificated instructional staff, certificated administrative staff, and superintendents.

NEW SECTION. Sec. 9. A new section is added to chapter 28A.710 RCW to read as follows:

Sections 7 and 8 of this act govern school operation and management under RCW 28A.710.040 and apply to charter schools established under chapter 28A.710 RCW.

Sec. 10. RCW 28A.405.106 and 2016 c 72 s 202 are each amended to read as follows:

(1) Subject to funds appropriated for this purpose, the office of the superintendent of public instruction must develop and make available a professional development program to support the implementation of the evaluation systems required by RCW 28A.405.100. The program components may be organized into professional development modules for principals, administrators, and teachers. The professional development program shall include a comprehensive online training package.

(2) The training program must include, but not be limited to, the following topics:

(a) Introduction of the evaluation criteria for teachers and principals and the four-level rating system;

(b) Orientation to and use of instructional frameworks;

(c) Orientation to and use of the leadership frameworks;

(d) Best practices in developing and using data in the evaluation systems,

including multiple measures, student growth data, classroom observations, and other measures and evidence;

(e) Strategies for achieving maximum rater agreement;

(f) Evaluator feedback protocols in the evaluation systems;

(g) Examples of high quality teaching and leadership; and

(h) Methods to link the evaluation process to ongoing educator professional development.

(3) The training program must also include the foundational elements of cultural competence, focusing on multicultural education and principles of English language acquisition, including information regarding best practices to implement the tribal history and culture curriculum. The content of the training must be aligned with the standards ~~((for cultural competence))~~ of practice developed by the Washington professional educator standards board under ~~((RCW 28A.410.270))~~ RCW 28A.410.260. The office of the superintendent of public instruction, in consultation with the Washington professional educator standards board, the steering committee established in RCW 28A.405.100, and the educational opportunity gap oversight and accountability committee, must integrate the content for cultural competence into the overall training for principals, administrators, and teachers to support the revised evaluation systems.

(4) To the maximum extent feasible, the professional development program must incorporate or adapt existing online training or curriculum, including securing materials or curriculum under contract or purchase agreements within available funds. Multiple modes of instruction should be incorporated including videos of classroom teaching, participatory exercises, and other engaging combinations of online audio, video, and print presentation.

(5) The professional development program must be developed in modules that allow:

(a) Access to material over a reasonable number of training sessions;

(b) Delivery in person or online; and

(c) Use in a self-directed manner.

(6) The office of the superintendent of public instruction must maintain a website that includes the online professional development materials along with sample evaluation forms and templates, links to relevant research on evaluation and on high quality teaching and leadership, samples of contract and collective bargaining language on key topics, examples of multiple measures of teacher and principal performance, suggestions for data to measure student growth, and other tools that will assist school districts in implementing the revised evaluation systems.

(7) The office of the superintendent of public instruction must identify the number of in-service training hours associated with each professional development module and develop a way for users to document their completion of the training. Documented completion of the training under this section is considered approved in-service training for the purposes of RCW 28A.415.020.

(8) The office of the superintendent of public instruction shall periodically update the modules to reflect new topics and research on performance evaluation so that the training serves as an ongoing source of continuing education and professional development.

(9) The office of the superintendent of public instruction shall work with the educational service districts to provide clearinghouse services for the identification and publication of professional development opportunities for teachers and principals that align with performance evaluation criteria.

Sec. 11. RCW 28A.410.270 and 2019 c 386 s 3 are each amended to read as follows:

(1)(a) The Washington professional educator standards board shall adopt a set of articulated teacher knowledge, skill, and performance standards for effective teaching that are evidence-based, measurable, meaningful, and documented in high quality research as being associated with improved student learning. The standards shall be calibrated for each level along the entire career continuum.

(b) ~~((In developing the standards, the board shall, to the extent possible, incorporate standards for cultural competency along the entire continuum. For the purposes of this subsection, "cultural competency" includes knowledge~~

~~of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students.))~~ The Washington professional educator standards board shall incorporate along the entire continuum the standards of practice developed under RCW 28A.410.260.

(c) By January 1, 2020, in order to ensure that teachers can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, the Washington professional educator standards board shall incorporate along the entire continuum the social-emotional learning standards and benchmarks recommended by the social-emotional learning benchmarks work group in its October 1, 2016, final report titled, "addressing social emotional learning in Washington's K-12 public schools." In incorporating the social-emotional learning standards and benchmarks, the Washington professional educator standards board must include related competencies, such as trauma-informed practices, consideration of adverse childhood experiences, mental health literacy, antibullying strategies, and culturally sustaining practices.

(2) The Washington professional educator standards board shall adopt a definition of master teacher, with a comparable level of increased competency between professional certification level and master level as between professional certification level and national board certification. Within the definition established by the Washington professional educator standards board, teachers certified through the national board for professional teaching standards shall be considered master teachers.

(3) The Washington professional educator standards board shall maintain a uniform, statewide, valid, and reliable classroom-based means of evaluating teacher effectiveness as a culminating measure at the preservice level that is to be used during the student-teaching field experience. This assessment shall include multiple measures of teacher performance in classrooms, evidence of

positive impact on student learning, and shall include review of artifacts, such as use of a variety of assessment and instructional strategies, and student work.

(4) Award of a professional certificate shall be based on a minimum of two years of successful teaching experience as defined by the board, and may not require candidates to enroll in a professional certification program.

(5) Educator preparation programs approved to offer the residency teaching certificate shall be required to demonstrate how the program produces effective teachers as evidenced by the measures established under this section and other criteria established by the Washington professional educator standards board.

Sec. 12. RCW 28A.413.050 and 2019 c 386 s 5 are each amended to read as follows:

(1) The board shall adopt state standards of practice for paraeducators that are based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014. These standards must include:

(a) Supporting instructional opportunities;

(b) Demonstrating professionalism and ethical practices;

(c) Supporting a positive and safe learning environment;

(d) Communicating effectively and participating in the team process; and

(e) ~~((Demonstrating cultural competency aligned with))~~ The standards of practice developed by the Washington professional educator standards board under ~~((RCW 28A.410.270))~~ RCW 28A.410.260.

(2) By January 1, 2020, in order to ensure that paraeducators can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, the board shall incorporate into the standards of practice for paraeducators adopted under subsection (1) of this section the social-emotional learning standards, benchmarks, and related competencies described in RCW 28A.410.270.

Sec. 13. RCW 28B.50.891 and 2017 c 237 s 20 are each amended to read as follows:

Beginning with the 2015-16 academic year, any community or technical college that offers an apprenticeship program or certificate program for paraeducators must provide candidates the opportunity to earn transferable course credits within the program. The programs must also incorporate the standards ~~((for cultural competence, including))~~ of practice developed by the Washington professional educator standards board under RCW 28A.410.260 and include multicultural education and principles of language acquisition ~~((, developed by the professional educator standards board under RCW 28A.410.270))~~. Subject to the availability of amounts appropriated for this specific purpose, by September 1, 2018, the paraeducator apprenticeship and certificate programs must also incorporate the state paraeducator standards of practice adopted by the paraeducator board under RCW 28A.413.050.

NEW SECTION. Sec. 14. The following acts or parts of acts are each repealed:

(1) RCW 28A.345.100 (Cultural competency training for school board directors and superintendents) and 2016 c 72 s 201;

(2) RCW 28A.415.420 (Cultural competence professional development and training) and 2016 c 72 s 204;

(3) RCW 28A.415.440 (Professional learning days—Social-emotional learning) and 2019 c 386 s 7; and

(4) RCW 28A.657.140 (Cultural competence professional development and training) and 2016 c 72 s 205."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5051 Prime Sponsor, Committee on Ways & Means: Concerning state oversight and accountability of peace officers and corrections officers. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.101.010 and 2020 c 119 s 2 are each amended to read as follows:

When used in this chapter:

(1) ~~((The term "commission"))~~ "Applicant" means an individual who has received a conditional offer of employment with a law enforcement or corrections agency.

(2) "Commission" means the Washington state criminal justice training commission.

~~((2) The term "boards" means the education and training standards boards, the establishment of which are authorized by this chapter.-))~~

(3) ~~((The term "criminal"))~~ "Criminal justice personnel" means any person who serves ((in a county, city, state, or port commission agency engaged in crime prevention, crime reduction, or enforcement of the criminal law)) as a peace officer, reserve officer, or corrections officer.

(4) ~~((The term "law"))~~ "Law enforcement personnel" means any ((public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipal, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas. For the purposes of this subsection "primary function" means that function to which the greater allocation of resources is made)) person elected, appointed, or employed as a general authority Washington peace officer as defined in RCW 10.93.020.

(5) ~~((The term "correctional"))~~ "Correctional personnel" means any employee or volunteer who by state, county, municipal, or combination thereof, statute has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of those individuals whose civil rights have been limited in some way by legal sanction.

(6) "Chief for a day program" means a program in which commissioners and staff partner with local, state, and federal law enforcement agencies, hospitals, and the community to provide a day of special attention to chronically ill children. Each child is selected and sponsored by a law enforcement agency. The event, "chief for a day," occurs on one day, annually or every other year and may occur on the grounds and in the facilities of the commission. The program may include any appropriate honoring of the child as a "chief," such as a certificate swearing them in as a chief, a badge, a uniform, and donated gifts such as games, puzzles, and art supplies.

(7) ~~((A peace officer or corrections officer is "convicted"))~~ "Convicted" means at the time a plea of guilty, nolo contendere, or deferred sentence has been accepted, or a verdict of guilty or finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not limited to sentencing, posttrial or postfact-finding motions and appeals. "Conviction" includes ((a deferral of sentence)) all instances in which a plea of guilty or nolo contendere is the basis for conviction, all proceedings in which there is a case disposition agreement, and ((also includes the)) any equivalent disposition by a court in a jurisdiction other than the state of Washington.

(8) ~~((a) "Discharged for disqualifying misconduct" has the following meanings:~~

~~(i) A peace officer terminated from employment for: (A) Conviction of (I) any crime committed under color of authority as a peace officer, (II) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), (III) the unlawful use or possession of a controlled substance, or (IV) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (B) conduct that would constitute any of the crimes addressed in (a)(i)(A) of this~~

~~subsection; or (C) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination; or~~

~~(ii) A corrections officer terminated from employment for: (A) Conviction of (I) any crime committed under color of authority as a corrections officer, (II) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), or (III) the unlawful use or possession of a controlled substance; (B) conduct that would constitute any of the crimes addressed in (a)(ii)(A) of this subsection; or (C) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination.~~

~~(b) A peace officer or corrections officer is "discharged for disqualifying misconduct" within the meaning of this subsection (8) under the ordinary meaning of the term and when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward, would more likely than not have led to discharge for disqualifying misconduct within the meaning of this subsection (8).~~

~~(9) When used in context of proceedings referred to in this chapter, "final" means that the peace officer or corrections officer has exhausted all available civil service appeals, collective bargaining remedies, and all other such direct administrative appeals, and the officer has not been reinstated as the result of the action. Finality is not affected by the pendency or availability of state or federal administrative or court actions for discrimination, or by the pendency or availability of any remedies other than direct civil service and collective bargaining remedies.~~

~~(10)) "Peace officer" ((means any law enforcement personnel subject to the basic law enforcement training requirement of RCW 43.101.200 and any other requirements of that section, notwithstanding any waiver or exemption granted by the commission, and notwithstanding the statutory exemption based on date of initial hire under RCW 43.101.200)) has the same meaning as a general authority Washington peace~~

officer as defined in RCW 10.93.020. Commissioned officers of the Washington state patrol, whether they have been or may be exempted by rule of the commission from the basic training requirement of RCW 43.101.200, are included as peace officers for purposes of this chapter. Fish and wildlife officers with enforcement powers for all criminal laws under RCW 77.15.075 are peace officers for purposes of this chapter.

~~((11)) (9) "Corrections officer" means any corrections agency employee whose primary job function is to provide for the custody, safety, and security of adult ((prisoners)) persons in jails and detention facilities ((and who is subject to the basic corrections training requirement of RCW 43.101.220 and any other requirements of that section, notwithstanding any waiver or exemption granted by the commission, and notwithstanding the statutory exemption based on date of initial hire under RCW 43.101.220. For the purpose of RCW 43.101.080, 43.101.096, 43.101.106, 43.101.116, 43.101.121, 43.101.126, 43.101.136, 43.101.146, 43.101.156, 43.101.380, and 43.101.400, "corrections)) in the state. "Corrections officer" does not include individuals employed by state agencies.~~

(10) "Finding" means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred, but was consistent with law and policy; or could neither be proven or disproven.

(11) "Reserve officer" means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce the criminal laws of this state and includes:

(a) Specially commissioned Washington peace officers as defined in RCW 10.93.020;

(b) Limited authority Washington peace officers as defined in RCW 10.93.020;

(c) Persons employed as security by public institutions of higher education as defined in RCW 28B.10.016; and

(d) Persons employed for the purpose of providing security in the K-12 Washington state public school system as defined in RCW 28A.150.010 and who are

authorized to use force in fulfilling their responsibilities.

(12) "Tribal police officer" means any person employed and commissioned by a tribal government to enforce the criminal laws of that government.

Sec. 2. RCW 43.101.020 and 1974 ex.s. c 94 s 2 are each amended to read as follows:

(1) There is hereby created and established a state commission to be known and designated as the Washington state criminal justice training commission.

(2) The purpose of ((such)) the commission shall be to ((provide programs and standards for the training of criminal justice personnel)) establish and administer standards and processes for certification, suspension, and decertification of peace officers and corrections officers. The commission shall provide programs and training that enhance the integrity, effectiveness, and professionalism of peace officers and corrections officers while helping to ensure that law enforcement and correctional services are delivered to the people of Washington in a manner that fully complies with the Constitutions and laws of this state and United States. In carrying out its duties, the commission shall strive to promote public trust and confidence in every aspect of the criminal justice system.

Sec. 3. RCW 43.101.030 and 2020 c 44 s 1 are each amended to read as follows:

The commission shall consist of ((sixteen)) 21 members((7 who shall be selected)) as follows:

(1) The governor shall appoint ((two)):

(a) One incumbent sheriff((1)) and ((two)) one incumbent chief((1)) of police.

((2) The governor shall appoint one officer)) The governor shall additionally appoint an alternate incumbent chief of police who may perform commission duties in place of the appointed incumbent chief if that person is unavailable;

(b) Two officers at or below the level of first line supervisor who:

(i) Have at least ten years' experience as law enforcement officers;

(ii) Are from ((a county)) two different law enforcement ((agency and one officer at or below the level of first line supervisor from a municipal law enforcement agency. Each appointee under this subsection (2) shall have at least ten years experience as a law enforcement officer.

((3) The governor shall appoint one)) agencies that each have at least 15 officers and are different than the agencies with which the members in (a) of this subsection are affiliated; and

(iii) Are affiliated with different labor organizations;

(c) One tribal police officer at or below the level of first line supervisor who has at least 10 years' experience as a law enforcement officer;

(d) One person employed ((in a county correctional system and one person employed in the state correctional system.

((4) The governor shall appoint one)) in a state or county corrections agency;

(e) One incumbent county prosecuting attorney or municipal attorney((1

((5) The governor shall appoint one)) and one public defender;

(f) One licensed attorney with background in investigating, advocating, teaching, training, or presiding over matters related to enhancing law enforcement practices and accountability, who has not been employed in law enforcement;

(g) One elected official of a local government((1

((6) The governor shall appoint two private citizens)) who is not a sheriff or police chief and has not been employed in the last 10 years as a peace officer or prosecutor in any jurisdiction;

(h) One person with civilian oversight or auditing experience over law enforcement agencies;

(i) Seven community members who are not employed in law enforcement, ((one from)) including at least two who reside east of the crest of the Cascade mountains and ((one from west of the crest of the Cascade mountains. At)) at least ((one of the private citizens must be)) three who are from a historically underrepresented community or communities((1

~~(7) The governor shall appoint one);~~
and

(j) One tribal chair, board member, councilmember, or ((designee)) enrolled member from a federally recognized tribe with an active certification agreement under RCW 43.101.157((

~~(8) The three remaining members shall be:~~

~~(a)) who is not a sheriff and has not been employed in the last 10 years as a peace officer or prosecutor in any jurisdiction;~~

(2) The attorney general or the attorney general's designee;

~~((b) The special agent in charge of the Seattle office of the federal bureau of investigation; and~~

~~(e)) (3) The chief of the state patrol or the chief's designee.~~

Sec. 4. RCW 43.101.040 and 2009 c 549 s 5167 are each amended to read as follows:

All members appointed to the commission by the governor shall be appointed for terms of six years, such terms to commence on July first, and expire on June thirtieth(~~(: PROVIDED, That of the)~~). However, for members first appointed (~~three shall be appointed for two year terms, three shall be appointed for four year terms, and three shall be appointed for six year terms: PROVIDED, FURTHER, That the terms of the two members appointed as incumbent police chiefs shall not expire in the same year nor shall the terms of the two members appointed as representing correctional systems expire in the same year nor shall the terms of the two members appointed as incumbent sheriffs expire in the same year~~) as a result of chapter . . ., Laws of 2021 (this act), the governor shall appoint members to terms ranging from two years to six years in order to stagger future appointments. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member (~~he or she~~) the appointee is to succeed. Any member may be reappointed for additional terms.

Sec. 5. RCW 43.101.060 and 1999 c 97 s 2 are each amended to read as follows:

The commission shall elect a chair and a vice chair from among its members. (~~Seven~~) Nine members of the commission

shall constitute a quorum. (~~The governor shall summon the commission to its first meeting.~~

~~Meetings))~~ The commission shall meet at least quarterly. Additional meetings may be called by the chair and shall be called by ((him or her)) the chair upon the written request of six members.

Sec. 6. RCW 43.101.080 and 2020 c 119 s 13 are each amended to read as follows:

The commission shall have all of the following powers:

~~(1) ((To meet at such times and places as it may deem proper;~~

~~(2) To adopt any rules and regulations as it may deem necessary;~~

~~(3) To contract for services as it deems necessary in order to carry out its duties and responsibilities;~~

~~(4) To cooperate with and secure the cooperation of any department, agency, or instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;~~

~~(5) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it;~~

~~(6) To select and employ an executive director, and to empower him or her to perform such duties and responsibilities as it may deem necessary;~~

~~(7) To))~~ Conduct training, including the basic law enforcement academy and in-service training, and assume legal, fiscal, and program responsibility for all training conducted by the commission;

~~((8) To establish))~~ (2) Grant, deny, suspend, or revoke certification of, or require remedial training for, peace officers and corrections officers under the provisions of this chapter;

(3) Grant, deny, suspend, or revoke certification of tribal police officers whose tribal governments have agreed to participate in the tribal police officer certification process;

(4) Related to its duties under subsections (2) and (3) of this section, provide for the comprehensive and timely investigation of complaints where necessary to ensure adherence to law and agency policy, strengthen the integrity and accountability of peace officers and

corrections officers, and maintain public trust and confidence in the criminal justice system in this state;

(5) Establish, by rule and regulation, curricula and standards for the training of criminal justice personnel where such curricula and standards are not prescribed by statute;

~~((9) To own)) (6) Own, establish, and operate, or ((to)) contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel ((and to purchase, lease, or otherwise acquire, subject to the approval of the department of enterprise services, a training facility or facilities necessary to the conducting of such programs;~~

~~(10) To establish, by rule and regulation, minimum curriculum standards for all training programs conducted for employed criminal justice personnel;~~

~~((11) To review));~~

(7) Review and approve or reject standards for instructors of training programs for criminal justice personnel, and ((to)) employ personnel from law enforcement agencies on a temporary basis as instructors without any loss of employee benefits to those instructors from those agencies;

~~((12) To direct)) (8) Direct the development of alternative, innovative, and interdisciplinary training techniques;~~

~~((13) To review)) (9) Review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards ((recommended by the training standards and education boards)), including continuing education;~~

~~((14) To allocate)) (10) Allocate financial resources among training and education programs conducted by the commission;~~

~~((15) To)) (11) Purchase, lease, or otherwise acquire, subject to the approval of the department of enterprise services, a training facility or facilities and allocate training facility space among training and education programs conducted by the commission;~~

~~((16) To issue)) (12) Issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;~~

~~((17) To provide)) (13) Provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;~~

~~((18) To establish)) (14) Establish rules and regulations ((recommended by the training standards and education boards)) prescribing minimum standards relating to physical, mental, and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision;~~

~~((19) To require)) (15) Require county, city, port, or state law enforcement and corrections agencies that make a conditional offer of employment to an applicant as a fully commissioned peace officer, a reserve officer, or a corrections officer to administer a background investigation ((including a check of criminal history, verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident, a psychological examination, and a polygraph test or similar assessment to each applicant, the results of which shall be used by the employer to determine the applicant's suitability for employment as a fully commissioned peace officer, a reserve officer, or a corrections officer. The background investigation, psychological examination, and the polygraph examination shall be administered in accordance with the requirements of RCW 43.101.095(2) for peace officers, and RCW 43.101.096 for corrections officers. The employing county, city, or state law enforcement agency may require that each peace officer, reserve officer, or corrections officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer, reserve officer, or corrections officer does not~~

~~readily have the means to pay for his or her portion of the testing fee. This subsection does not apply to corrections officers employed by state agencies;~~

~~(20) To promote)) in accordance with the requirements of RCW 43.101.095 to determine the applicant's suitability for employment as a fully commissioned peace officer, reserve officer, or corrections officer;~~

(16) Appoint members of a hearings panel as provided under RCW 43.101.380;

(17) Issue public recommendations to the governing body of a law enforcement agency regarding the agency's command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, or other matters;

(18) Promote positive relationships between law enforcement and the ((citizens)) residents of the state of Washington ((by allowing)) through commissioners and staff ((to participate)) participation in the "chief for a day program." The executive director shall designate staff who may participate. In furtherance of this purpose, the commission may accept grants of funds and gifts and may use its public facilities for such purpose. At all times, the participation of commissioners and staff shall comply with chapter 42.52 RCW and chapter 292-110 WAC((-

All));

(19) Adopt, amend, repeal, and administer rules and regulations ((adopted by the commission shall be adopted and administered)) pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

Sec. 7. RCW 43.101.085 and 2020 c 119 s 1 are each amended to read as follows:

In addition to its other powers granted under this chapter, the commission has authority and power to:

~~(1) ((Adopt, amend, or repeal rules as necessary to carry out this chapter;~~

~~(2)) Contract for services as it deems necessary in order to carry out its duties and responsibilities;~~

(2) Cooperate with and secure the cooperation of any department, agency, or

instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;

(3) Select and employ an executive director, and empower the director to perform such duties and responsibilities as the commission may deem necessary;

(4) Issue subpoenas and statements of charges, and administer oaths in connection with investigations, hearings, or other proceedings held under this chapter, or designate individuals to do so;

~~((43))~~ (5) Employ such staff as necessary for the implementation and enforcement of this chapter;

(6) Take or cause to be taken depositions and other discovery procedures as needed in investigations, hearings, and other proceedings held under this chapter;

~~((44) Appoint members of a hearings board as provided under RCW 43.101.380;~~

~~(5))~~ (7) Enter into contracts for professional services determined by the commission to be necessary for adequate enforcement of this chapter;

~~((6) Grant, deny, or revoke certification of peace officers and corrections officers under the provisions of this chapter;~~

~~(7) Designate individuals authorized to sign subpoenas and statements of charges under the provisions of this chapter;~~

~~(8) Employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; and~~

~~(9) Grant, deny, or revoke certification of tribal police officers whose tribal governments have agreed to participate in the tribal police officer certification process)) and~~

(8) Exercise lawful actions necessary to enable the commission to fully and adequately perform its duties and to exercise the lawful powers granted to the commission.

Sec. 8. RCW 43.101.095 and 2018 c 32 s 5 are each amended to read as follows:

(1) As a condition of ~~((continuing))~~ employment ~~((as peace officers))~~, all Washington peace officers~~((: (a) Shall~~

~~timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter)) and corrections officers are required to obtain certification as a peace officer or corrections officer or exemption therefrom and maintain certification as required by this chapter and the rules of the commission.~~

~~(2) (a) ((As a condition of continuing employment for any)) Any applicant who has been offered a conditional offer of employment as a ((fully commissioned)) peace officer or ((a)) reserve officer ((after July 24, 2005)) or offered a conditional offer of employment as a corrections officer after July 1, 2021, including any person whose certification has lapsed as a result of a break of more than ((twenty-four)) 24 consecutive months in the officer's service ((as a fully commissioned peace officer or reserve officer, the applicant shall)) for a reason other than being recalled to military service, must submit to a background investigation ((including a)) to determine the applicant's suitability for employment. Employing agencies may only make a conditional offer of employment pending completion of the background check and shall verify in writing to the commission that they have complied with all background check requirements prior to making any nonconditional offer of employment.~~

~~(b) The background check must include:~~

~~(i) A check of criminal history, ((verification)) any national decertification index, commission records, and all disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct and the reason for separation from employment. Law enforcement or correctional agencies that previously employed the applicant shall disclose employment information within 30 days of receiving a written request from the employing agency conducting the background investigation, including the reason for the officer's separation from the agency. Complaints or investigations of misconduct must be disclosed regardless of the result of the~~

~~investigation or whether the complaint was unfounded;~~

~~(ii) Inquiry to the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any potential impeachment disclosure list;~~

~~(iii) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined by the commission;~~

~~(iv) A review of the applicant's social media accounts;~~

~~(v) Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident ((r-a));~~

~~(vi) A psychological examination ((r and a)) administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission;~~

~~(vii) A polygraph or similar assessment ((as)) administered by ((the county, city, or state law enforcement agency, the results of which shall be used to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer.~~

~~(i) The background investigation including a check of criminal history shall be administered by the county, city, or state law enforcement agency that made the conditional offer of employment in compliance with standards established in the rules of the commission.~~

~~(ii) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission.~~

~~(iii) The polygraph test shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association and in compliance with standards established in rules of the commission.~~

~~(iv))~~ an experienced professional with appropriate training and in compliance with standards established in rules of the commission; and

~~(viii)~~ Any other test or assessment ((to be administered as part of the background investigation shall be administered in compliance with standards established in rules of)) that may be required in rule by the commission.

~~((b))~~ (c) The commission may establish standards for the background check requirements in this section and any other preemployment background check requirement that may be imposed by an employing agency or the commission.

~~(d)~~ The employing ((county, city, or state)) law enforcement agency may require that each ((peace officer or reserve officer)) person who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or ((four hundred dollars)) \$400, whichever is less. ((County, city, and state law enforcement)) Employing agencies may establish a payment plan if they determine that the ((peace officer or reserve officer)) person does not readily have the means to pay ((for his or her portion of)) the testing fee.

~~(3)~~ ((The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1, 2002. Thereafter, the commission may revoke certification pursuant to this chapter.

~~(4))~~ The commission shall allow a peace officer or corrections officer to retain status as a certified peace officer or corrections officer as long as the officer: (a) Timely meets the basic ((law enforcement)) training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) timely meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification suspended or revoked by the commission.

~~((5))~~ (4) As a ((prerequisite to)) condition of certification, ((as well as

a prerequisite to pursuit of a hearing under RCW 43.101.155,)) a peace officer or corrections officer must, on a form devised or adopted by the commission, authorize the release to the employing agency and commission of ((his or her)) the officer's personnel files, including disciplinary, termination ((papers)), civil or criminal investigation ((files)), or other ((files, papers,)) records or information that are directly related to a certification matter or decertification matter before the commission. The peace officer or corrections officer must also consent to and facilitate a review of the officer's social media accounts, however, consistent with RCW 49.44.200, the officer is not required to provide login information. The release of information may not be delayed, limited, or precluded by any agreement or contract between the officer, or the officer's union, and the entity responsible for the records or information.

~~((6))~~ (5) The employing agency and commission ((is)) are authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment ((by the commission)) or ((peace officer)) certification under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

~~((7))~~ (6) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

(7) Prior to certification, the employing agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as a peace officer or corrections officer.

Sec. 9. RCW 43.101.105 and 2011 c 234 s 3 are each amended to read as follows:

(1) ((Upon)) To help prevent misconduct, enhance peace officer and corrections officer accountability through the imposition of sanctions commensurate to the wrongdoing when misconduct occurs, and enhance public

trust and confidence in the criminal justice system, upon request by ((a peace)) an officer's employer or on its own initiative, the commission may deny, suspend, or revoke certification of ((any peace)), or require remedial training for, an officer((, after)) as provided in this section. The commission shall provide the officer with written notice and a hearing, if a hearing is timely requested by the ((peace)) officer under RCW 43.101.155((, based upon a finding of one or more of the following conditions:

~~(a) The peace officer has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;~~

~~(b) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;~~

~~(c) The peace officer has been convicted at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;~~

~~(d) The peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2002;~~

~~(e) The peace officer's certificate was previously issued by administrative error on the part of the commission; or~~

~~(f) The peace officer has interfered with an investigation or action for denial or revocation of certificate by:~~
~~(i) Knowingly making a materially false statement to the commission; or (ii) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness)). Notice and hearing are not required when a peace officer voluntarily surrenders certification.~~

(2) ((After July 24, 2005, the)) The commission must deny or revoke the certification of an applicant or officer if the applicant or officer:

(a) (i) Has been convicted of:

(A) A felony offense;

(B) A gross misdemeanor domestic violence offense;

(C) An offense with sexual motivation as defined in RCW 9.94A.030;

(D) An offense under chapter 9A.44 RCW; or

(E) A federal or out-of-state offense comparable to an offense listed in (a) (i) (A) through (D) of this subsection (2); and

(ii) (A) The offense was not disclosed at the time of application for initial certification; or

(B) The officer was a certified peace officer or corrections officer at the time of the offense; and

(iii) The offense is not one for which the officer was granted a full and unconditional pardon; and

(iv) The offense was not adjudicated as a juvenile and the record sealed;

(b) Has been terminated by the employing agency or otherwise separated from the employing agency after engaging in, or was found by a court to have engaged in, the use of force which resulted in death or serious injury and the use of force violated the law;

(c) Has been terminated by the employing agency or otherwise separated from the employing agency after witnessing, or found by a court to have witnessed, another officer's use of excessive force and:

(i) Was in a position to intervene to end the excessive use of force and failed to do so; or

(ii) Failed to report the use of excessive force in accordance with agency policy or law;

(d) Has been terminated by the employing agency or otherwise separated from the employing agency after knowingly making, or found by a court to have knowingly made, misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or corrections officer including, but not

limited to, committing perjury, filing false reports, hiding evidence, or failing to report exonerating information. This subsection (2) (d) does not apply to representations made in the course and for the purposes of an undercover investigation or other lawful law enforcement purpose; or

(e) Is prohibited from possessing weapons by state or federal law or by a permanent court order entered after a hearing.

(3) The commission may deny, suspend, or revoke certification or require remedial training of an applicant or officer if the applicant or officer:

(a) Failed to timely meet all requirements for obtaining a certificate of basic law enforcement or corrections training, a certificate of basic law enforcement or corrections training equivalency, or a certificate of exemption from the training;

(b) Was previously issued a certificate through administrative error on the part of the commission;

(c) Knowingly falsified or omitted material information on an application to the employer or for training or certification to the commission;

(d) Interfered with an investigation or action for denial or revocation of certification by:

(i) Knowingly making a materially false statement to the commission;

(ii) Failing to timely and accurately report information to the commission as required by law or policy; or

(iii) In any matter under review or investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness;

(e) Engaged in a use of force that could reasonably be expected to cause physical injury, and the use of force violated the law or policy of the officer's employer;

(f) Committed sexual harassment as defined by state law;

(g) Through fraud or misrepresentation, has used the position of peace officer or corrections officer for personal gain;

(h) Engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religion, creed, color, national origin, immigration status, disability, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status;

(i) Has affiliation with one or more extremist organizations;

(j) Whether occurring on or off duty, has:

(i) Been found to have committed a felony, without regard to conviction;

(ii) Engaged in a pattern of acts showing an intentional or reckless disregard for the rights of others, including but not limited to violation of an individual's constitutional rights under the state or federal constitution or a violation of RCW 10.93.160;

(iii) Engaged in unsafe practices involving firearms, weapons, or vehicles which indicate either a willful or wanton disregard for the safety of persons or property; or

(iv) Engaged in any conduct or pattern of conduct that: Fails to meet the ethical and professional standards required of a peace officer or corrections officer; disrupts, diminishes, or otherwise jeopardizes public trust or confidence in the law enforcement profession and correctional system; or demonstrates an inability or unwillingness to uphold the officer's sworn oath to enforce the constitution and laws of the United States and the state of Washington;

(k) Has been suspended or discharged, has resigned or retired in lieu of discharge, or has separated from the agency after the alleged misconduct occurred, for any conduct listed in this section; or

(l) Has voluntarily surrendered the person's certification as a peace officer or corrections officer.

(4) In addition to the penalties set forth in subsection (3) of this section, the commission may require mandatory retraining or placement on probation for up to two years, or both. In determining the appropriate penalty or sanction, the

commission shall consider: The findings and conclusions, and the basis for the findings and conclusions, of any due process hearing or disciplinary appeals hearing following an investigation by a law enforcement agency regarding the alleged misconduct, if such hearing has occurred prior to the commission's action; any sanctions or training ordered by the employing agency regarding the alleged misconduct; and whether the employing agency bears any responsibility for the situation.

(5) The commission shall deny certification to any applicant who ~~((has))~~ lost ~~((his or her))~~ certification as a result of a break in service of more than ~~((twenty-four))~~ 24 consecutive months if that applicant failed to comply with the requirements set forth in RCW 43.101.080~~((+19))~~ (15) and 43.101.095(2).

(6) The fact that the commission has suspended an officer's certification is not, in and of itself, a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(7) Any suspension or period of probation imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(8) A law enforcement agency may not terminate a peace officer based solely on imposition of suspension or probation by the commission. This subsection does not prohibit a law enforcement agency from terminating a peace officer based on the underlying acts or omissions for which the commission took such action.

(9) Any of the misconduct listed in subsections (2) and (3) of this section is grounds for denial, suspension, or revocation of certification of a reserve officer to the same extent as applied to a peace officer, if the reserve officer is certified pursuant to RCW 43.101.095.

Sec. 10. RCW 43.101.115 and 2001 c 167 s 4 are each amended to read as follows:

(1) A person denied a certification based upon dismissal or withdrawal from a basic law enforcement academy ~~((for any reason not also involving discharge for disqualifying misconduct))~~ or basic corrections academy under RCW 43.101.105(3)(a) is eligible for readmission and certification upon

meeting standards established in rules of the commission, which rules may provide for probationary terms on readmission.

(2) A person whose certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation is eligible for certification upon meeting standards established in rules of the commission, ~~((rules which may))~~ which rules shall provide for a probationary period of certification in the event of reinstatement of eligibility.

(3) A person whose certification is ~~mandatorily~~ denied or revoked ~~((based upon a felony criminal conviction))~~ pursuant to RCW 43.101.105(2) is not eligible for certification at any time.

(4) A ~~((peace officer))~~ person whose certification is denied or revoked ~~((based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction,))~~ for reasons other than provided in subsections (1) through (3) of this section may, five years after the revocation or denial, petition the commission for reinstatement of the certificate or for eligibility for reinstatement. The commission ~~((shall))~~ may hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in rules of the commission. If the certificate is reinstated or eligibility for certification is determined, the commission ~~((may))~~ shall establish a probationary period of certification.

(5) A ~~((peace officer))~~ person whose certification is revoked based solely upon a criminal conviction may petition the commission for reinstatement immediately upon a final judicial reversal of the conviction. The commission shall hold a hearing on request to consider reinstatement, and the commission may allow reinstatement based on standards established in rules of the commission. If the certificate is reinstated or if eligibility for certification is determined, the commission ~~((may))~~ shall establish a probationary period of certification.

(6) The commission's rules and decisions regarding reinstatement shall align with its responsibilities to enhance public trust and confidence in

the law enforcement profession and correctional system.

Sec. 11. RCW 43.101.135 and 2001 c 167 s 6 are each amended to read as follows:

(1) (a) Upon (~~termination~~) separation of a peace officer or corrections officer from an employing agency for any reason, including termination, resignation, or retirement, the agency (~~(of termination)~~) shall (~~(, within fifteen days of the termination,)~~) notify the commission within 15 days of the separation date on a personnel action report form provided by the commission. (~~(The agency of termination shall, upon)~~)

(b) If the employer accepts an officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission, including the findings from any internal or external investigations into alleged misconduct.

(2) In addition to those circumstances under subsection (1) of this section and whether or not disciplinary proceedings have been concluded, the employing agency shall:

(a) Notify the commission within 15 days of learning of the occurrence of any death or serious injury caused by the use of force by an officer or any time an officer has been charged with a crime. Employing agencies must have a policy requiring officers to report any pending criminal charges and any conviction, plea, or other case disposition immediately to their agency; and

(b) Notify the commission within 15 days of an initial disciplinary decision by an employing agency for alleged behavior or conduct by an officer that is noncriminal and may result in revocation of certification pursuant to RCW 43.101.105.

(3) To better enable the commission to act swiftly and comprehensively when misconduct has occurred that may undermine public trust and confidence in law enforcement or the correctional system, if the totality of the circumstances support a conclusion that the officer resigned or retired in anticipation of discipline, whether or not the misconduct was discovered at the time, and when such discipline, if carried forward, would more likely than not have led to discharge, or if the

officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the officer's suspension or discharge, the employing agency shall conduct and complete the investigation and provide all relevant information to the commission as if the officer were still employed by the agency.

(4) Upon request of the commission, the employing agency shall provide such additional documentation or information as the commission deems necessary to determine whether the (~~termination~~) separation or event provides grounds for suspension or revocation (~~(under RCW 43.101.105)~~).

(5) At its discretion, the commission may:

(a) Initiate decertification proceedings upon conclusion of any investigation or disciplinary proceedings initiated by the employing agency;

(b) Separately pursue action against the officer's certification under RCW 43.101.105; or

(c) Wait to proceed until any investigation, disciplinary proceedings, or appeals through the employing agency are final before taking action. Where a decertification decision requires a finding that the officer's conduct violated policy and the employing agency has begun its investigation into the underlying event, the commission shall await notification of a finding by the employing agency before beginning the decertification process.

(6) No action or failure to act by an employing agency or decision resulting from an appeal of that action precludes action by the commission to suspend or revoke an officer's certification.

(7) An employing agency may not enter into any agreement or contract with an officer, or union:

(a) Not to report conduct, delay reporting, or preclude disclosure of any relevant information, including a promise not to check the box on a commission notice that indicates the officer may have committed misconduct, in exchange for allowing an officer to resign or retire or for any other reason; or

(b) That allows the agency to destroy or remove any personnel record while the

officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

(8) The commission shall maintain ~~((these notices))~~ all information provided pursuant to this section in a permanent file ~~((, subject to RCW 43.101.400))~~.

(9) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by an officer or an employing agency to timely and accurately report information pursuant to this section.

Sec. 12. RCW 43.101.145 and 2001 c 167 s 8 are each amended to read as follows:

~~((A law enforcement officer or duly authorized representative of a law enforcement agency))~~ (1) Any individual may submit a written complaint to the commission ~~((charging))~~ stating that ~~((a peace))~~ an officer's certificate should be denied, suspended, or revoked, and specifying the grounds for the ~~((charge))~~ complaint. Filing a complaint does not make a complainant a party to the commission's action.

(2) The commission has sole discretion whether to investigate a complaint, and the commission has sole discretion whether to investigate matters relating to certification, denial of certification, or revocation of certification on any other basis, without restriction as to the source or the existence of a complaint. All complaints must be resolved with a written determination, regardless of the decision to investigate.

(3) The commission may initiate an investigation in any instance where there is a pattern of complaints or other actions that may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or (3). The commission must consider the agency's policies and procedures and the officer's job duties and assignment in determining what constitutes a pattern.

(4) A person who files a complaint in good faith under this section is immune from suit or any civil action related to the filing or the contents of the complaint.

Sec. 13. RCW 43.101.155 and 2001 c 167 s 9 are each amended to read as follows:

(1) If the commission determines, upon investigation, that there is ~~((probable))~~ cause to believe that a peace officer's or corrections officer's certification should be denied, suspended, or revoked under RCW 43.101.105, the commission must prepare and serve upon the officer a statement of charges. Service on the officer must be by mail or by personal service on the officer unless the officer has consented to service in some other manner, including electronic notification. Notice of the charges must also be mailed to or otherwise served upon the officer's agency of ~~((termination))~~ separation and any current ~~((law enforcement))~~ agency employer. The statement of charges must be accompanied by a notice that to receive a hearing on the denial or revocation, the officer must, within ~~((sixty))~~ 60 days of ~~((communication of))~~ the statement of charges, request a hearing before the hearings ~~((board))~~ panel appointed under RCW 43.101.380. Failure of the officer to request a hearing within the ~~((sixty-day))~~ 60-day period constitutes a default, whereupon the commission may enter an order under RCW 34.05.440.

(2) If a hearing is requested, the officer is required to provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission. Unless otherwise agreed to by the mutual agreement of the parties or for good cause, within two weeks of receipt of the officer's request for a hearing, the commission shall set a date ~~((of))~~ for the hearing, which must be ~~((scheduled not earlier than ninety days nor later than one hundred eighty days after communication of the statement of charges to the officer; the one hundred eighty-day period may be extended on mutual agreement of the parties or for good cause))~~ held within 90 days thereafter. ~~((The))~~ On the date the hearing is set, the commission shall ~~((give))~~ transmit electronic and written notice of the hearing ~~((at least twenty days prior to the hearing))~~ to the

officer, and provide public notice on the commission website, specifying the time, date, and place of hearing.

Sec. 14. RCW 43.101.157 and 2006 c 22 s 2 are each amended to read as follows:

(1) Tribal governments may voluntarily request certification for their police officers. Tribal governments requesting certification for their police officers must enter into a written agreement with the commission. The agreement must require the tribal law enforcement agency and its officers to comply with all of the requirements for granting, denying, and revoking certification as those requirements are applied to peace officers certified under this chapter and the rules of the commission.

(2) Officers making application for certification as tribal police officers shall meet the requirements of this chapter and the rules of the commission as those requirements are applied to certification of peace officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of peace officers.

~~((3) For purposes of certification, "tribal police officer" means any person employed and commissioned by a tribal government to enforce the criminal laws of that government.))~~

Sec. 15. RCW 43.101.230 and 1981 c 134 s 1 are each amended to read as follows:

~~((Indian tribe))~~ Tribal police officers and employees who are engaged in law enforcement activities and who do not qualify as "criminal justice personnel" or "law enforcement personnel" under RCW 43.101.010 ~~((, as now law or hereafter amended, may))~~ shall be provided training under this chapter if: (a) The tribe is recognized by the federal government, and (b) the tribe pays to the commission the full cost of providing such training. The commission shall place all money received under this section into the criminal justice training account.

Sec. 16. RCW 43.101.390 and 2001 c 167 s 11 are each amended to read as follows:

(1) The commission ~~((, its boards,))~~ and individuals acting on behalf of the commission ~~((and its boards))~~ are immune from suit in any civil or criminal action contesting or based upon proceedings or

other official acts performed in the course of their duties in the administration and enforcement of this chapter.

(2) Without limiting the generality of the foregoing, the commission and individuals acting on behalf of the commission are immune from suit in any civil action based on the certification, denial of certification, suspension, or other action regarding decertification of peace officers, reserve officers, or corrections officers.

Sec. 17. RCW 43.101.420 and 2009 c 19 s 1 are each amended to read as follows:

(1) The commission shall offer a training session on personal crisis recognition and crisis intervention services to criminal justice, ~~((correctional personnel))~~ corrections, and other public safety employees. The training shall be implemented by the commission in consultation with appropriate public and private organizations that have expertise in crisis referral services and in the underlying conditions leading to the need for crisis referral.

(2) The training shall consist of a minimum of one hour of classroom or internet instruction, and shall include instruction on the following subjects:

(a) The description and underlying causes of problems that may have an impact on the personal and professional lives of public safety employees, including mental health issues, chemical dependency, domestic violence, financial problems, and other personal crises;

(b) Techniques by which public safety employees may recognize the conditions listed in (a) of this subsection and understand the need to seek assistance and obtain a referral for consultation and possible treatment; and

(c) A listing of examples of public and private crisis referral agencies available to public safety employees.

(3) The training developed by the commission shall be made available by the commission to all employees of state and local agencies that perform public safety duties. The commission may charge a reasonable fee to defer the cost of making the training available.

Sec. 18. RCW 34.12.035 and 1984 c 141 s 6 are each amended to read as follows:

The chief administrative law judge shall designate an administrative law judge with subject matter expertise to serve, as the need arises, as presiding officer in (~~state~~):

(1) State patrol disciplinary hearings conducted under RCW 43.43.090; and

(2) Decertification hearings conducted under RCW 43.101.380.

Sec. 19. RCW 40.14.070 and 2011 c 60 s 18 are each amended to read as follows:

(1)(a) (~~County~~) Other than those records detailed in subsection (4) of this section, county, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The ~~archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.~~

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, and other than the law enforcement records detailed in subsection (4) of this section, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic

retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

(a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest.

(4) Personnel records for any peace officer or corrections officer must be retained for the duration of the officer's employment and a minimum of 10 years thereafter. Such records include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, other disciplinary appeals and litigation records, and any other records needed to comply with the requirements set forth in RCW 43.101.095 and 43.101.135.

Sec. 20. RCW 43.101.380 and 2020 c 119 s 10 are each amended to read as follows:

(1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is ~~((clear, cogent, and convincing))~~ a preponderance of the evidence.

(2) In all hearings requested under RCW 43.101.155 ~~((or 43.101.156))~~, an administrative law judge appointed under chapter 34.12 RCW shall be the presiding officer, shall make all necessary rulings in the course of the hearing, and shall issue a proposed recommendation, but is not entitled to vote. In addition, a five-member hearings panel shall ~~((both))~~ hear the case and make the commission's final administrative decision. ((Members of the commission may, but need not, be appointed to the hearings panels.))

(3) The commission shall appoint ~~((as follows two or more panels))~~ a panel to hear certification actions as follows:

(a) When a hearing is requested in relation to a certification action of a Washington peace officer ~~((who is not a peace officer of the Washington state patrol))~~, the commission shall appoint to the panel: (i) One police chief ~~((+ (iii) one))~~ or sheriff from an agency not a

current or past employer of the peace officer; ~~((iii) two)~~ (ii) one certified Washington peace officer~~((s))~~ who ~~((are))~~ is at or below the level of first line supervisor ~~((, one of whom is from a city or county law enforcement agency,))~~ and who ~~((have))~~ has at least ten years' experience as a peace officer~~((s))~~; ~~((and (iv) one person who is not currently a peace officer and who represents a community college or four year college or university))~~ (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

~~(b) ((When a hearing is requested in relation to a certification action of a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) Either one police chief or one sheriff; (ii) one administrator of the state patrol; (iii) one certified Washington peace officer who is at or below the level of first line supervisor, who is not a state patrol officer, and who has at least ten years' experience as a peace officer; (iv) one state patrol officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four year college or university.~~

~~(e))~~ When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel: (i) ~~((Two heads of))~~ A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility; (ii) ~~((two))~~ one corrections officer~~((s))~~ who ~~((are))~~ is at or below the level of first line supervisor ~~((, who are from city, county, or state corrections agencies,))~~ and who ~~((have))~~ has at least ten years' experience as a corrections officer~~((s))~~; (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and ~~((iii))~~ (v) one person with expertise and background in police

accountability who is not ~~((currently))~~ a current or former peace officer or corrections officer ~~((and who represents a community college or four year college or university))~~.

~~((d))~~ (c) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel (i) ~~((either one police chief or one sheriff; (ii))~~ one tribal police chief; ~~((iii))~~ one certified Washington peace officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; ~~((iv))~~ (ii) one tribal police officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; ~~((and (v) one person who is not currently a peace officer and who represents a community college or four year college or university))~~ (iii) one civilian member of the commission as appointed under RCW 43.101.030(1) (f) and (h) through (j); (iv) one member of the public who is not a prosecutor, defense attorney, judge, or law enforcement officer; and (v) one person with expertise and background in police accountability who is not a current or former peace officer or corrections officer.

~~((e))~~ (d) Persons appointed to hearings panels by the commission shall, in relation to any certification action on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular commission members.

~~((3))~~ Where the charge upon which revocation or denial is based is that a peace officer or corrections officer was "discharged for disqualifying misconduct," and the discharge is "final," within the meaning of RCW 43.101.105(1)(d) or 43.101.106(4), and the officer received a civil service hearing or arbitration hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if the hearings panel determines that the discharge occurred and was based on disqualifying misconduct; ~~((4))~~ (4) In decertification matters where there was a due process hearing or a disciplinary appeals hearing following an investigation by a law enforcement agency, or a criminal hearing

regarding the alleged misconduct, the hearings panel need not redetermine the underlying facts but may make ~~((this))~~ its determination based solely on review of the records and decision relating to ~~((the employment separation))~~ those proceedings and any investigative or summary materials from the administrative law judge, legal counsel, and commission staff. However, the hearings panel may, in its discretion, consider additional evidence to determine whether ~~((such a discharge))~~ misconduct occurred ~~((and was based on such disqualifying misconduct))~~. The hearings panel shall, upon written request by the subject peace officer or corrections officer, allow the peace officer or corrections officer to present additional evidence of extenuating circumstances.

~~((Where the charge upon which revocation or denial of certification is based is that a peace officer or corrections officer "has been convicted at any time of a felony offense" within the meaning of RCW 43.101.105(1)(c) or 43.101.106(3), the hearings panel shall revoke or deny certification if it determines that the peace officer or corrections officer was convicted of a felony. The hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the criminal proceeding. However, the hearings panel shall, upon the panel's determination of relevancy, consider additional evidence to determine whether the peace officer or corrections officer was convicted of a felony.~~

~~Where the charge upon which revocation or denial is based is under RCW 43.101.105(1) (a), (b), (c), or (f) or 43.101.106 (1), (2), (5), or (6), the hearings panel shall determine the underlying facts relating to the charge upon which revocation or denial of certification is based.~~

~~(4))~~ (5) The commission is authorized to proceed regardless of whether an arbitrator or other appellate decision maker overturns the discipline imposed by the officer's employing agency or whether the agency settles an appeal. No action or failure to act by a law enforcement agency or corrections agency or decision resulting from an appeal of that action precludes action by the commission to suspend or revoke an officer's

certificate, to place on probation, or to require remedial training for the officer.

(6) The hearings, but not the deliberations of the hearings panel, are open to the public. The transcripts, admitted evidence, and written decisions of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure, and are subject to subpoena and discovery proceedings in civil actions.

(7) Summary records of hearing dispositions must be made available on an annual basis on a public website.

(8) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598.

Sec. 21. RCW 43.101.400 and 2020 c 119 s 12 are each amended to read as follows:

(1) Except as provided under subsection (2) of this section, ~~((the following records of the commission are confidential and exempt from public disclosure: (a) The contents of personnel action reports filed under RCW 43.101.135 or 43.101.136; (b))~~ all files, papers, and other information obtained by the commission as part of an initial background investigation pursuant to RCW 43.101.095~~((5))~~ or 43.101.096; and (c) all investigative files of the commission compiled in carrying out the responsibilities of the commission under this chapter) (2) and (4) are confidential and exempt from public disclosure. Such records are not subject to public disclosure, subpoena, or discovery proceedings in any civil action, except as provided in ~~((subsection (5) of this section))~~ RCW 43.101.380(6) or which become part of the record in a suspension or decertification matter.

(2) Records which are otherwise confidential and exempt under subsection (1) of this section may be reviewed and copied: (a) By the officer involved or the officer's counsel or authorized representative, who may review the officer's file and may submit any additional exculpatory or explanatory evidence, statements, or other information, any of which must be included in the file; (b) by a duly authorized representative of (i) the agency of termination, or (ii) a current employing law enforcement or corrections

agency, which may review and copy its employee-officer's file; or (c) by a representative of or investigator for the commission.

(3) Records which are otherwise confidential and exempt under subsection (1) of this section may also be inspected at the offices of the commission by a duly authorized representative of a law enforcement or corrections agency considering an application for employment by a person who is the subject of a record. A copy of records which are otherwise confidential and exempt under subsection (1) of this section may later be obtained by an agency after it hires the applicant. In all other cases under this subsection, the agency may not obtain a copy of the record.

~~(4) (Upon a determination that a complaint is without merit, that a personnel action report filed under RCW 43.101.135 does not merit action by the commission, or that a matter otherwise investigated by the commission does not merit action, the commission shall purge records addressed in subsection (1) of this section.~~

~~(5) The hearings, but not the deliberations, of the hearings board are open to the public. The transcripts, admitted evidence, and written decisions of the hearings board on behalf of the commission are not confidential or exempt from public disclosure, and are subject to subpoena and discovery proceedings in civil actions.~~

~~(6)) The commission shall maintain a database that is publicly searchable, machine readable, and exportable, and accompanied by a complete, plain-language data dictionary describing the names of officers and employing agencies, all conduct investigated, certifications denied, notices and accompanying information provided by law enforcement or correctional agencies, including the reasons for separation from the agency, decertification or suspension actions pursued, and final disposition and the reasons therefor for at least 30 years after final disposition of each incident. The dates for each material step of the process must be included. Any decertification must be reported to the national decertification index.~~

(5) Every individual, legal entity, and agency of federal, state, or local government is immune from civil liability, whether direct or derivative,

for providing information to the commission in good faith.

NEW SECTION. Sec. 22. A new section is added to chapter 43.101 RCW to read as follows:

The commission must develop policies, procedures, and rules to ensure that the goals of this act are fully implemented as intended and in a timely manner, and to provide appropriate clarity to affected persons and entities as to how the commission will process complaints, investigations, and hearings, and impose sanctions, related to officer decertification. The commission must work in collaboration with interested parties and entities in developing the policies, procedures, and rules, and must take into account issues regarding when and how the commission may appropriately exercise authority in relation to simultaneous investigations and disciplinary processes, and how the commission may exercise available remedies in a manner that is appropriate to case circumstances and consistent with the goals of this act. The policies, procedures, and rules must be completed by June 30, 2022.

Sec. 23. RCW 41.56.905 and 1983 c 287 s 5 are each amended to read as follows:

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, 43.101.095, and 43.101.135, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

Sec. 24. RCW 49.44.200 and 2013 c 330 s 1 are each amended to read as follows:

(1) An employer may not:

(a) Request, require, or otherwise coerce an employee or applicant to disclose login information for the employee's or applicant's personal social networking account;

(b) Request, require, or otherwise coerce an employee or applicant to access his or her personal social networking account in the employer's presence in a manner that enables the employer to observe the contents of the account;

(c) Compel or coerce an employee or applicant to add a person, including the employer, to the list of contacts

associated with the employee's or applicant's personal social networking account;

(d) Request, require, or cause an employee or applicant to alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account; or

(e) Take adverse action against an employee or applicant because the employee or applicant refuses to disclose his or her login information, access his or her personal social networking account in the employer's presence, add a person to the list of contacts associated with his or her personal social networking account, or alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account.

(2) This section does not apply to an employer's request or requirement that an employee share content from his or her personal social networking account if the following conditions are met:

(a) The employer requests or requires the content to make a factual determination in the course of conducting an investigation;

(b) The employer undertakes the investigation in response to receipt of information about the employee's activity on his or her personal social networking account;

(c) The purpose of the investigation is to: (i) Ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or (ii) investigate an allegation of unauthorized transfer of an employer's proprietary information, confidential information, or financial data to the employee's personal social networking account; and

(d) The employer does not request or require the employee to provide his or her login information.

(3) This section does not:

(a) Apply to a social network, intranet, or other technology platform that is intended primarily to facilitate work-related information exchange, collaboration, or communication by employees or other workers;

(b) Prohibit an employer from requesting or requiring an employee to disclose login information for access to: (i) An account or service provided by virtue of the employee's employment relationship with the employer; or (ii) an electronic communications device or online account paid for or supplied by the employer;

(c) Prohibit an employer from enforcing existing personnel policies that do not conflict with this section; (~~or~~)

(d) Prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law, or rules of self-regulatory organizations; or

(e) Apply to a background investigation in accordance with RCW 43.101.095. However, the officer must not be required to provide login information.

(4) If, through the use of an employer-provided electronic communications device or an electronic device or program that monitors an employer's network, an employer inadvertently receives an employee's login information, the employer is not liable for possessing the information but may not use the login information to access the employee's personal social networking account.

(5) For the purposes of this section and RCW 49.44.205:

(a) "Adverse action" means: Discharging, disciplining, or otherwise penalizing an employee; threatening to discharge, discipline, or otherwise penalize an employee; and failing or refusing to hire an applicant.

(b) "Applicant" means an applicant for employment.

(c) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

(d) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or other activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-

municipal corporation. "Employer" includes an agent, a representative, or a designee of the employer.

(e) "Login information" means a user name and password, a password, or other means of authentication that protects access to a personal social networking account.

Sec. 25. RCW 41.06.040 and 1969 ex.s. c 36 s 22 are each amended to read as follows:

The provisions of this chapter apply to:

(1) Each board, commission or other multimember body, including, but not limited to, those consisting in whole or in part of elective officers;

(2) Each agency, and each employee and position therein, not expressly excluded or exempted under the provisions of RCW 41.06.070 or otherwise excluded or exempted in this chapter.

NEW SECTION. **Sec. 26.** A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter do not apply in the Washington state criminal justice training commission to two confidential secretaries involved in managing the confidential records under RCW 43.101.135 and 43.101.400.

NEW SECTION. **Sec. 27.** No later than December 1, 2022, the criminal justice training commission shall submit a written report to the governor and the appropriate committees of the legislature detailing progress of implementation of this act.

NEW SECTION. **Sec. 28.** The following acts or parts of acts are each repealed:

(1) RCW 43.101.096 (Corrections officer certification) and 2020 c 119 s 3;

(2) RCW 43.101.106 (Denial or revocation of corrections officer certification) and 2020 c 119 s 4;

(3) RCW 43.101.116 (Denial or revocation of corrections officer certification-Readmission to academy-Reinstatement) and 2020 c 119 s 5;

(4) RCW 43.101.136 (Termination of corrections officer-Notification to commission) and 2020 c 119 s 7;

(5) RCW 43.101.146 (Written complaint by corrections officer or corrections agency to deny or revoke corrections officer certification-Immunity of complainant) and 2020 c 119 s 8;

(6) RCW 43.101.156 (Denial or revocation of corrections officer certification-Statement of charges-Notice-Hearing) and 2020 c 119 s 9; and

(7) RCW 43.101.180 (Priorities) and 1981 c 136 s 27 & 1974 ex.s. c 94 s 18.

NEW SECTION. **Sec. 29.** A new section is added to chapter 10.93 RCW to read as follows:

A general authority Washington law enforcement agency or limited authority Washington law enforcement agency is prohibited from considering the application for any office, place, position, or employment within the agency if the applicant has not provided the agency a document, voluntarily and knowingly signed by the applicant, that authorizes each prior employer to release any and all information relating to the applicant's employment, and further releasing and holding harmless the agency and each prior employer from any and all liability that may potentially result from the release and use of such information provided.

Sec. 30. RCW 43.101.200 and 2019 c 415 s 969 are each amended to read as follows:

(1) All law enforcement personnel, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080. For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. Successful completion of basic training is requisite to the continuation of employment of such personnel initially employed on or after January 1, 1990.

(2) Except as (~~otherwise~~) provided in (~~this chapter~~) RCW 43.101.170, the commission shall provide the aforementioned training (~~together with~~) and shall have the sole authority to do so. The commission shall provide necessary facilities, supplies, materials, and the board and room of noncommuting attendees for seven days per week, except during the 2017-2019 and 2019-2021 fiscal biennia when the employing, county, city, or state law enforcement agency shall reimburse the commission for twenty-five percent of the cost of training its personnel. Additionally, to the extent funds are provided for this purpose, the commission shall reimburse to participating law enforcement agencies with ten or less full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training: PROVIDED, That such reimbursement shall include only the actual cost of temporary replacement not to exceed the total amount of salary and benefits received by the replaced officer during his or her training period."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Hoff and Jacobsen.

MINORITY recommendation: Without recommendation. Signed by Representatives Harris; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

E2SSB 5052 Prime Sponsor, Committee on Ways & Means: Concerning the creation of health equity zones. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. FINDINGS AND INTENT. (1) The legislature finds that people of color, Indian, people experiencing poverty, and immigrant populations experience significant health disparities compared to the general population, including more limited access to health care and poorer health outcomes. The legislature finds that these circumstances result in higher rates of morbidity and mortality for persons of color and immigrant populations than observed in the general population.

(2) Therefore, the legislature intends to create health equity zones to address significant health disparities identified by health outcome data. The state intends to work with community leaders within the health equity zones to share information and coordinate efforts with the goal of addressing the most urgent needs. Health equity zone partners shall develop, expand, and maintain positive relationships with communities of color, Indian communities, communities experiencing poverty, and immigrant communities within the zone to develop effective and sustainable programs to address health inequity.

NEW SECTION. Sec. 2. A new section is added to chapter 43.70 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, in coordination with the governor's interagency council on health disparities, local health jurisdictions, and accountable communities of health, must share and review population health data, which may be related to chronic and infectious diseases, maternal birth complications, preterm births and other newborn health complications, and any other relevant health data, including hospital community health needs assessments, to identify, or allow communities to self-identify, potential health equity zones in the state and develop projects to meet the unique needs of each zone. The department must provide technical support to communities in the use of data to facilitate self-identification of health equity zones.

(2) Communities' uses of data must align with projects and outcomes to be measured in self-identified zones.

(3) The department must use the first 12 months following the effective date of

this section to develop a plan and process to allow communities to implement health equity zone programs statewide. The department has authority to determine the number of health equity zones and projects based on available resources.

(4) Communities that self-identify zones or the department must notify relevant community organizations in the zones of the health equity zone designation and allow those organizations to identify projects to address the zone's most urgent needs related to health disparities. Community organizations may include, but are not limited to:

- (a) Community health clinics;
- (b) Local health providers;
- (c) Federally qualified health centers;
- (d) Health systems;
- (e) Local government;
- (f) Public school districts;
- (g) Recognized American Indian organizations and Indian health organizations;
- (h) Local health jurisdictions; and
- (i) Any other nonprofit organization working to address health disparities in the zone.

(5) Local organizations working within zones may form coalitions to identify the needs of the zone, design projects to address those needs, and develop an action plan to implement the projects. Local organizations may partner with state or national organizations outside the specific zone designation. Projects may include, but are not limited to:

- (a) Addressing health care provider access and health service delivery;
- (b) Improving information sharing and community trust in providers and services;
- (c) Conducting outreach and education efforts; and
- (d) Recommending systems and policy changes that will improve population health.

(6) The department must provide:

(a) Support to the coalitions in identifying and applying for resources to support projects within the zones;

(b) Technical assistance related to project management and developing health outcome and other measures to evaluate project success; and

(c) Subject to availability, funding to implement projects.

(7) Subject to the availability of amounts appropriated for this specific purpose, by December 1, 2023, and every two years thereafter, the department must submit a report to the legislature detailing the projects implemented in each zone and the outcome measures, including year-over-year health data, to demonstrate project success.

(8) For the purposes of this section "health equity zone" or "zone" means a contiguous geographic area that demonstrates measurable and documented health disparities and poor health outcomes, which may include but are not limited to high rates of maternal complications, newborn health complications, and chronic and infectious disease, is populated by communities of color, Indian communities, communities experiencing poverty, or immigrant communities, and is small enough for targeted interventions to have a significant impact on health outcomes and health disparities. Documented health disparities must be documented or identified by the department or the centers for disease control and prevention."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Hoff; Jacobsen; Rude; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representative Harris.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5062

Prime Sponsor, Committee on Ways & Means: Concerning the management,

oversight, and use of data. Reported by
Committee on Appropriations

MAJORITY recommendation: Do pass as amended by
Committee on Civil Rights & Judiciary.

Strike everything after the enacting
clause and insert the following:

"NEW SECTION. Sec. 1. SHORT TITLE.
This act may be known and cited as the
Washington privacy act.

NEW SECTION. Sec. 2. LEGISLATIVE
FINDINGS AND INTENT. (1) The legislature
finds that the people of Washington
regard their privacy as a fundamental
right and an essential element of their
individual freedom. Washington's
Constitution explicitly provides the
right to privacy, and fundamental privacy
rights have long been and continue to be
integral to protecting Washingtonians
and to safeguarding our democratic
republic.

(2) Ongoing advances in technology
have produced an exponential growth in
the volume and variety of personal data
being generated, collected, stored, and
analyzed, which presents both promise and
potential peril. The ability to harness
and use data in positive ways is driving
innovation and brings beneficial
technologies to society. However, it has
also created risks to privacy and
freedom. The unregulated and
unauthorized use and disclosure of
personal information and loss of privacy
can have devastating impacts, ranging
from financial fraud, identity theft, and
unnecessary costs, to personal time and
finances, to destruction of property,
harassment, reputational damage,
emotional distress, and physical harm.

(3) Given that technological
innovation and new uses of data can help
solve societal problems, protect public
health associated with global pandemics,
and improve quality of life, the
legislature seeks to shape responsible
public policies where innovation and
protection of individual privacy
coexist. The legislature notes that our
federal authorities have not developed or
adopted into law regulatory or
legislative solutions that give
consumers control over their privacy. In
contrast, the European Union's general
data protection regulation has continued
to influence data privacy policies and
practices of those businesses competing
in global markets. In the absence of
federal standards, Washington and other

states across the United States are
analyzing elements of the European
Union's general data protection
regulation to enact state-based data
privacy regulatory protections.

(4) Responding to COVID-19 illustrates
the need for public policies that protect
individual privacy while fostering
technological innovation. For years,
contact tracing best practices have been
used by public health officials to
securely process high value individual
data and have effectively stopped the
prolific spread of infectious diseases.
However, the scale of COVID-19 is
unprecedented. Contact tracing is
evolving in a manner that necessitates
the use of technology to rapidly collect
and process data from multiple data sets,
many of which are unanticipated, to
protect public health as well as to
facilitate the continued safe operation
of the economy. The benefits of such
technology, however, should not
supersede the potential privacy risks to
individuals.

(5) Exposure notification applications
have already been deployed throughout the
country and the world. However, contact
tracing technology is rapidly evolving.
Applications may be integrated in a
manner that facilitates the aggregation
and sharing of individual data that in
effect generate profiles of individuals.
Artificial intelligence may be used for
the extrapolation of data to analyze and
interpret data for public health
purposes. Moreover, the potential
government use of exposure notification
applications poses additional potential
privacy risks to individuals due to the
types of sensitive data it has access to
and processes. Much of that processing
may have legal effects, including access
to services or establishments. The
capabilities of next generation contact
tracing technologies are unknown and
policies must be in place to provide
privacy protections for current uses as
well as potential future uses.

(6) With this act, the legislature
intends to: Provide a modern privacy
regulatory framework with data privacy
guardrails to protect individual
privacy; establish mechanisms for
consumers to exercise control over their
data; instill public confidence on the
processing of their personal and public
health data during any global pandemic;
and require companies to be responsible

custodians of data as technological innovations emerge.

(7) This act gives consumers the ability to protect their own rights to privacy by explicitly providing consumers the right to access, correct, and delete personal data, as well as the rights to obtain data in a portable format and to opt out of the collection and use of personal data for certain purposes. These rights will add to, and not subtract from, the consumer protection rights that consumers already have under Washington state law.

(8) This act also imposes affirmative obligations upon companies to safeguard personal data, and provide clear, understandable, and transparent information to consumers about how their personal data is used. It strengthens compliance and accountability by requiring data protection assessments in the collection and use of personal data. Finally, it exclusively empowers the state attorney general to obtain and evaluate a company's data protection assessments, to conduct investigations, while preserving consumers' rights under the consumer protection act to impose penalties where violations occur, and to prevent against future violations.

(9) Lastly, the legislature encourages the state office of privacy and data protection to monitor (1) the development of universal privacy controls that communicate a consumer's affirmative, freely given, and unambiguous choice to opt out of the processing of their personal data, and (2) the effectiveness of allowing a consumer to designate a third party to exercise a consumer right on their behalf as authorized in other privacy laws.

PART 1

Personal Data Privacy Regulations—Private Sector

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means a legal entity that controls, is controlled by, or is under common control with, that other legal entity. For these purposes, "control" or "controlled" means: Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a company; control in any manner over the

election of a majority of the directors or of individuals exercising similar functions; or the power to exercise a controlling influence over the management of a company.

(2) "Air carriers" has the same meaning as defined in the federal aviation act (49 U.S.C. Sec. 40101, et seq.), including the airline deregulation act (49 U.S.C. 41713).

(3) "Authenticate" means to use reasonable means to determine that a request to exercise any of the rights in section 103 (1) through (4) of this act is being made by the consumer who is entitled to exercise such rights with respect to the personal data at issue.

(4) "Business associate" has the same meaning as in Title 45 C.F.R., established pursuant to the federal health insurance portability and accountability act of 1996.

(5) "Child" has the same meaning as defined in the children's online privacy protection act, Title 15 U.S.C. Sec. 6501 through 6506.

(6) "Consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer signifies agreement to the processing of personal data relating to the consumer for a narrowly defined particular purpose. Acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information, does not constitute consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute consent. Likewise, agreement obtained through dark patterns does not constitute consent.

(7) "Consumer" means a natural person who is a Washington resident acting only in an individual or household context. It does not include a natural person acting in a commercial or employment context.

(8) "Controller" means the natural or legal person that, alone or jointly with others, determines the purposes and means of the processing of personal data.

(9) "Covered entity" has the same meaning as defined in Title 45 C.F.R., established pursuant to the federal health insurance portability and accountability act of 1996.

(10) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision making, or choice.

(11) "Decisions that produce legal effects concerning a consumer or similarly significant effects concerning a consumer" means decisions that result in the provision or denial of financial and lending services, housing, insurance, education enrollment, criminal justice, employment opportunities, health care services, or access to basic necessities, such as food and water.

(12) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such person, provided that the controller that possesses the data: (a) Takes reasonable measures to ensure that the data cannot be associated with a natural person, household, or device; (b) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and (c) contractually obligates any recipients of the information to comply with all provisions of this subsection.

(13) "Health care facility" has the same meaning as defined in RCW 70.02.010.

(14) "Health care information" has the same meaning as defined in RCW 70.02.010.

(15) "Health care provider" has the same meaning as defined in RCW 70.02.010.

(16) "Identified or identifiable natural person" means a person who can be readily identified, directly or indirectly.

(17) "Institutions of higher education" has the same meaning as in RCW 28B.92.030.

(18) "Judicial branch" means any court, agency, commission, or department provided in Title 2 RCW.

(19) "Known child" means a child under circumstances where a controller has actual knowledge of, or willfully disregards, the child's age.

(20) "Legislative agencies" has the same meaning as defined in RCW 44.80.020.

(21) "Local government" has the same meaning as in RCW 39.46.020.

(22) "Minor" means an individual who is at least 13 and under 16 years of age under circumstances where a controller has actual knowledge of, or willfully disregards, the minor's age.

(23) "Nonprofit corporation" has the same meaning as in RCW 24.03.005.

(24) "Personal data" means any information, including pseudonymous data, that is linked or reasonably linkable to an identified or identifiable natural person. "Personal data" does not include deidentified data or publicly available information.

(25) "Process" or "processing" means any operation or set of operations which are performed on personal data or on sets of personal data, whether or not by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(26) "Processor" means a natural or legal person who processes personal data on behalf of a controller.

(27) "Profiling" means any form of automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identified or identifiable natural person's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(28) "Protected health information" has the same meaning as defined in Title 45 C.F.R., established pursuant to the federal health insurance portability and accountability act of 1996.

(29) "Pseudonymous data" means personal data that cannot be attributed to a specific natural person without the use of additional information, provided that such additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.

(30) "Publicly available information" means information that is lawfully made available from federal, state, or local government records.

(31) (a) "Sale," "sell," or "sold" means the exchange of personal data for monetary or other valuable consideration by the controller to a third party.

(b) "Sale" does not include the following: (i) The disclosure of personal data to a processor who processes the personal data on behalf of the controller; (ii) the disclosure of personal data to a third party with whom the consumer has a direct relationship for purposes of providing a product or service requested by the consumer; (iii) the disclosure or transfer of personal data to an affiliate of the controller; (iv) the disclosure of information that the consumer (A) intentionally made available to the general public via a channel of mass media, and (B) did not restrict to a specific audience; or (v) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller's assets.

(32) "Sensitive data" means (a) personal data revealing racial or ethnic origin, religious beliefs, mental or physical health condition or diagnosis, sexual orientation, or citizenship or immigration status; (b) the processing of genetic or biometric data for the purpose of uniquely identifying a natural person; (c) the personal data from a known child; or (d) specific geolocation data. "Sensitive data" is a form of personal data.

(33) "Specific geolocation data" means information derived from technology including, but not limited to, global positioning system level latitude and longitude coordinates or other mechanisms that directly identifies the specific location of a natural person within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet. Specific geolocation data excludes the content of communications.

(34) "State agency" has the same meaning as in RCW 43.105.020.

(35) "Targeted advertising" means displaying advertisements to a consumer where the advertisement is selected based on personal data obtained from a consumer's activities over time and across one or more distinctly branded websites or online applications to predict the consumer's preferences or interests. It does not include advertising: (a) Based on activities within a controller's own commonly branded websites or online applications; (b) based on the context of a consumer's

current search query or visit to a website or online application; or (c) to a consumer in response to the consumer's request for information or feedback.

(36) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer, controller, processor, or an affiliate of the processor or the controller.

NEW SECTION. **Sec. 102.**
JURISDICTIONAL SCOPE. (1) This chapter applies to legal entities that conduct business in Washington or produce products or services that are targeted to residents of Washington, and that satisfy one or more of the following thresholds:

(a) During a calendar year, controls or processes personal data of 100,000 consumers or more; or

(b) Derives over 25 percent of gross revenue from the sale of personal data and processes or controls personal data of 25,000 consumers or more.

(2) This chapter does not apply to:

(a) State agencies, legislative agencies, the judicial branch, local governments, or tribes;

(b) Municipal corporations;

(c) Air carriers;

(d) Nonprofit organizations that:

(i) Are registered with the secretary of state under the charities program pursuant to chapter 19.09 RCW;

(ii) Collect personal data during legitimate activities related to the organization's tax-exempt purpose; and

(iii) Do not sell personal data collected by the organization;

(e) Information that meets the definition of:

(i) Protected health information for purposes of the federal health insurance portability and accountability act of 1996 and related regulations;

(ii) Health care information for purposes of chapter 70.02 RCW;

(iii) Patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(iv) Identifiable private information for purposes of the federal policy for the protection of human subjects, 45

C.F.R. Part 46; identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by the international council for harmonization; the protection of human subjects under 21 C.F.R. Parts 50 and 56; or personal data used or shared in research conducted in accordance with one or more of the requirements set forth in this subsection;

(v) Information and documents created specifically for, and collected and maintained by:

(A) A quality improvement committee for purposes of RCW 43.70.510, 70.230.080, or 70.41.200;

(B) A peer review committee for purposes of RCW 4.24.250;

(C) A quality assurance committee for purposes of RCW 74.42.640 or 18.20.390;

(D) A hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections for purposes of RCW 43.70.056, a notification of an incident for purposes of RCW 70.56.040(5), or reports regarding adverse events for purposes of RCW 70.56.020(2)(b);

(vi) Information and documents created for purposes of the federal health care quality improvement act of 1986, and related regulations;

(vii) Patient safety work product for purposes of 42 C.F.R. Part 3, established pursuant to 42 U.S.C. Sec. 299b-21 through 299b-26; or

(viii) Information that is (A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Part 164, and (B) derived from any of the health care-related information listed in this subsection (2)(e);

(f) Information originating from, and intermingled to be indistinguishable with, information under (e) of this subsection that is maintained by:

(i) A covered entity or business associate as defined by the health insurance portability and accountability act of 1996 and related regulations;

(ii) A health care facility or health care provider as defined in RCW 70.02.010; or

(iii) A program or a qualified service organization as defined by 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(g) Information used only for public health activities and purposes as described in 45 C.F.R. Sec. 164.512;

(h)(i) An activity involving the collection, maintenance, disclosure, sale, communication, or use of any personal data bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, as defined in Title 15 U.S.C. Sec. 1681a(f), by a furnisher of information, as set forth in Title 15 U.S.C. Sec. 1681s-2, who provides information for use in a consumer report, as defined in Title 15 U.S.C. Sec. 1681a(d), and by a user of a consumer report, as set forth in Title 15 U.S.C. Sec. 1681b.

(ii) (h)(i) of this subsection applies only to the extent that such an activity involving the collection, maintenance, disclosure, sale, communication, or use of such personal data by that agency, furnisher, or user is subject to regulation under the fair credit reporting act, Title 15 U.S.C. Sec. 1681 et seq., and the personal data is not collected, maintained, used, communicated, disclosed, or sold except as authorized by the fair credit reporting act;

(i) Personal data collected and maintained for purposes of chapter 43.71 RCW;

(j) Personal data collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley act (P.L. 106-102), and implementing regulations, if the collection, processing, sale, or disclosure is in compliance with that law;

(k) Personal data collected, processed, sold, or disclosed pursuant to the federal driver's privacy protection act of 1994 (18 U.S.C. Sec. 2721 et seq.), if the collection, processing, sale, or disclosure is in compliance with that law;

(l) Personal data regulated by the federal family education rights and privacy act, 20 U.S.C. Sec. 1232g and its implementing regulations;

(m) Personal data regulated by the student user privacy in education rights act, chapter 28A.604 RCW;

(n) Personal data collected, maintained, disclosed, or otherwise used in connection with the gathering, dissemination, or reporting of news or information to the public by news media as defined in RCW 5.68.010(5);

(o) Personal data collected, processed, sold, or disclosed pursuant to the federal farm credit act of 1971 (as amended in 12 U.S.C. Sec. 2001-2279cc) and its implementing regulations (12 C.F.R. Part 600 et seq.) if the collection, processing, sale, or disclosure is in compliance with that law; or

(p) Data collected or maintained: (i) In the course of an individual acting as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or contractor of that business to the extent that it is collected and used solely within the context of that role; (ii) as the emergency contact information of an individual under (p)(i) of this subsection used solely for emergency contact purposes; or (iii) that is necessary for the business to retain to administer benefits for another individual relating to the individual under (p)(i) of this subsection is used solely for the purposes of administering those benefits.

(3) Controllers that are in compliance with the children's online privacy protection act, Title 15 U.S.C. Sec. 6501 through 6506 and its implementing regulations, shall be deemed compliant with any obligation to obtain parental consent under this chapter.

(4) Payment-only credit, check, or cash transactions where no data about consumers are retained do not count as "consumers" for purposes of subsection (1) of this section.

NEW SECTION. Sec. 103. CONSUMER RIGHTS. (1) A consumer has the right to confirm whether or not a controller is processing personal data concerning the consumer and access the personal data the controller is processing.

(2) A consumer has the right to correct inaccurate personal data concerning the consumer, taking into account the nature of the personal data and the purposes of the processing of the personal data.

(3) A consumer has the right to delete personal data concerning the consumer.

(4) A consumer has the right to obtain personal data concerning the consumer, which the consumer previously provided to the controller, in a portable and, to the extent technically feasible, readily usable format that allows the individual to transmit the data to another controller without hindrance, where the processing is carried out by automated means.

(5) A consumer has the right to opt out of the processing of personal data concerning such a consumer for the purposes of (a) targeted advertising; (b) the sale of personal data; or (c) profiling in furtherance of decisions that produce legal effects concerning a consumer or similarly significant effects concerning a consumer.

NEW SECTION. Sec. 104. EXERCISING CONSUMER RIGHTS. (1) A consumer may exercise the rights set forth in section 103 of this act by submitting a request, at any time, to a controller specifying which rights the consumer wishes to exercise.

(2) Beginning July 31, 2023, a consumer may exercise the rights under section 103(5) (a) and (b) of this act:

(a) By designating an authorized agent who may exercise the rights on behalf of the consumer; or

(b) Via user-enabled global privacy controls, such as a browser plug-in or privacy setting, device setting, or other mechanism, that communicates or signals the consumer's choice to opt out.

(3) In the case of processing personal data of a known child, the parent or legal guardian of the known child may exercise the rights of this chapter on the child's behalf.

(4) In the case of processing personal data concerning a consumer subject to guardianship, conservatorship, or other protective arrangement under chapter 11.88, 11.92, or 11.130 RCW, the guardian or the conservator of the consumer may exercise the rights of this chapter on the consumer's behalf.

NEW SECTION. Sec. 105. RESPONDING TO REQUESTS. (1) Except as provided in this chapter, the controller must comply with a request to exercise the rights pursuant to section 103 of this act.

(2) (a) Controllers must provide one or more secure and reliable means for consumers to submit a request to exercise their rights under this chapter. These means must take into account the ways in which consumers interact with the controller and the need for secure and reliable communication of the requests.

(b) Controllers may not require a consumer to create a new account in order to exercise a right, but a controller may require a consumer to use an existing account to exercise the consumer's rights under this chapter.

(3) A controller must comply with a request to exercise the right in section 103(5) of this act as soon as feasibly possible, but no later than 15 days of receipt of the request.

(4) (a) A controller must inform a consumer of any action taken on a request to exercise any of the rights in section 103 (1) through (4) of this act without undue delay and in any event within 45 days of receipt of the request. That period may be extended once by 45 additional days where reasonably necessary, taking into account the complexity and number of the requests. The controller must inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

(b) If a controller does not take action on the request of a consumer, the controller must inform the consumer without undue delay and at the latest within 45 days of receipt of the request of the reasons for not taking action and instructions for how to appeal the decision with the controller as described in subsection (5) of this section.

(c) Information provided under this section must be provided by the controller to the consumer free of charge, up to twice annually. Where requests from a consumer are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either: (i) Charge a reasonable fee to cover the administrative costs of complying with the request; or (ii) refuse to act on the request. The controller bears the burden of demonstrating the manifestly unfounded or excessive character of the request.

(d) A controller is not required to comply with a request to exercise any of the rights under section 103 (1) through

(4) of this act if the controller is unable to authenticate the request using commercially reasonable efforts. In such a case, the controller may request the provision of additional information reasonably necessary to authenticate the request.

(5) (a) A controller must establish an internal process whereby a consumer may appeal a refusal to take action on a request to exercise any of the rights under section 103 of this act within a reasonable period of time after the controller refuses to take action on such request.

(b) The appeal process must be conspicuously available and as easy to use as the process for submitting such a request under this section.

(c) Within 30 days of receipt of an appeal, a controller must inform the consumer of any action taken or not taken in response to the appeal, along with a written explanation of the reasons in support thereof. That period may be extended by 60 additional days where reasonably necessary, taking into account the complexity and number of the requests serving as the basis for the appeal. The controller must inform the consumer of such an extension within 30 days of receipt of the appeal, together with the reasons for the delay. The controller must also provide the consumer with an email address or other online mechanism through which the consumer may submit the appeal, along with any action taken or not taken by the controller in response to the appeal and the controller's written explanation of the reasons in support thereof, to the attorney general.

(d) When informing a consumer of any action taken or not taken in response to an appeal pursuant to (c) of this subsection, the controller must clearly and prominently provide the consumer with information about how to file a complaint with the consumer protection division of the attorney general's office. The controller must maintain records of all such appeals and how it responded to them for at least 24 months and shall, upon request, compile and provide a copy of such records to the attorney general.

NEW SECTION. Sec. 106.
RESPONSIBILITY ACCORDING TO ROLE. (1)
 Controllers and processors are responsible for meeting their respective

obligations established under this chapter.

(2) Processors are responsible under this chapter for adhering to the instructions of the controller and assisting the controller to meet its obligations under this chapter. This assistance includes the following:

(a) Taking into account the nature of the processing, the processor shall assist the controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's obligation to respond to consumer requests to exercise their rights pursuant to section 103 of this act; and

(b) Taking into account the nature of processing and the information available to the processor, the processor shall: Assist the controller in meeting the controller's obligations in relation to the security of processing the personal data and in relation to the notification of a breach of the security of the system pursuant to RCW 19.255.010; and provide information to the controller necessary to enable the controller to conduct and document any data protection assessments required by section 109 of this act. The controller and processor are each responsible for only the measures allocated to them.

(3) Notwithstanding the instructions of the controller, a processor shall:

(a) Ensure that each person processing the personal data is subject to a duty of confidentiality with respect to the data; and

(b) Engage a subcontractor only after providing the controller with an opportunity to object and pursuant to a written contract in accordance with subsection (5) of this section that requires the subcontractor to meet the obligations of the processor with respect to the personal data.

(4) Taking into account the context of processing, the controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and establish a clear allocation of the responsibilities between them to implement such measures.

(5) Processing by a processor must be governed by a contract between the controller and the processor that is

binding on both parties and that sets out the processing instructions to which the processor is bound, including the nature and purpose of the processing, the type of personal data subject to the processing, the duration of the processing, and the obligations and rights of both parties. In addition, the contract must include the requirements imposed by this subsection and subsections (3) and (4) of this section, as well as the following requirements:

(a) At the choice of the controller, the processor shall delete or return all personal data to the controller as requested at the end of the provision of services, unless retention of the personal data is required by law;

(b) (i) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations in this chapter; and

(ii) The processor shall allow for, and contribute to, reasonable audits and inspections by the controller or the controller's designated auditor. Alternatively, the processor may, with the controller's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the processor's expense, an audit of the processor's policies and technical and organizational measures in support of the obligations under this chapter using an appropriate and accepted control standard or framework and audit procedure for the audits as applicable, and provide a report of the audit to the controller upon request.

(6) In no event may any contract relieve a controller or a processor from the liabilities imposed on them by virtue of its role in the processing relationship as defined by this chapter.

(7) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal data are to be processed. A person that is not limited in its processing of personal data pursuant to a controller's instructions, or that fails to adhere to such instructions, is a controller and not a processor with respect to a specific processing of data. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data

remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of personal data, it is a controller with respect to the processing.

NEW SECTION. Sec. 107.
RESPONSIBILITIES OF CONTROLLERS. (1) (a) Controllers shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:

(i) The categories of personal data processed by the controller;

(ii) The purposes for which the categories of personal data are processed;

(iii) How and where consumers may exercise the rights contained in section 103 of this act, including how a consumer may appeal a controller's action with regard to the consumer's request;

(iv) The categories of personal data that the controller shares with third parties, if any; and

(v) The categories of third parties, if any, with whom the controller shares personal data.

(b) If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller must clearly and conspicuously disclose the processing, as well as the manner in which a consumer may exercise the right to opt out of the processing, in a clear and conspicuous manner.

(c) The privacy notice required under this subsection must:

(i) Use clear and plain language;

(ii) Be in English and any other language in which a controller communicates with the consumer to whom the information pertains; and

(iii) Be understandable to the least sophisticated consumer.

(2) A controller's collection of personal data must be limited to what is reasonably necessary in relation to the purposes for which the data is processed.

(3) A controller's collection of personal data must be adequate, relevant, and limited to what is reasonably necessary in relation to the purposes for which the data is processed.

(4) Except as provided in this chapter, a controller may not process personal data for purposes that are not reasonably necessary to, or compatible with, the purposes for which the personal data is processed unless the controller obtains the consumer's consent.

(5) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data. The data security practices must be appropriate to the volume and nature of the personal data at issue.

(6) A controller shall not process personal data on the basis of a consumer's or a class of consumers' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, lawful source of income, or disability, in a manner that unlawfully discriminates against the consumer or class of consumers with respect to the offering or provision of: (a) Housing; (b) employment; (c) credit; (d) education; or (e) the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

(7) A controller may not discriminate against a consumer for exercising any of the rights contained in this chapter, including denying goods or services to the consumer, charging different prices or rates for goods or services, and providing a different level of quality of goods and services to the consumer. This subsection does not prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program. If a consumer exercises their right pursuant to section 103(5) of this act, a controller may not sell personal data to a third-party controller as part of such a program unless: (a) The sale is reasonably necessary to enable the third party to provide a benefit to which the consumer is entitled; (b) the sale of personal data to third parties is clearly disclosed in the terms of the program; and (c) the third party uses the personal

data only for purposes of facilitating such a benefit to which the consumer is entitled and does not retain or otherwise use or disclose the personal data for any other purpose.

(8) Except as otherwise provided in this chapter, a controller may not process sensitive data concerning a consumer without obtaining the consumer's consent or, in the case of the processing of sensitive data of a known child, without obtaining consent from the child's parent or lawful guardian, in accordance with the children's online privacy protection act requirements.

(9) Except as otherwise provided in this chapter, a controller may not process the personal data of a minor for the purposes of targeted advertising or the sale of personal data without obtaining consent from the minor.

(10) Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this chapter is deemed contrary to public policy and is void and unenforceable.

NEW SECTION. **Sec. 108.** PROCESSING DEIDENTIFIED DATA OR PSEUDONYMOUS DATA.

(1) This chapter does not require a controller or processor to do any of the following solely for purposes of complying with this chapter:

- (a) Reidentify deidentified data;
- (b) Comply with an authenticated consumer request to access, correct, delete, or port personal data pursuant to section 103 (1) through (4) of this act, if all of the following are true:
 - (i)(A) The controller is not reasonably capable of associating the request with the personal data; or (B) it would be unreasonably burdensome for the controller to associate the request with the personal data;

(ii) The controller does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data, or associate the personal data with other personal data about the same specific consumer; and

(iii) The controller does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor, except as otherwise permitted in this section; or

(c) Maintain data in identifiable form, or collect, obtain, retain, or access any data or technology, in order to be capable of associating an authenticated consumer request with personal data.

(2) The rights contained in section 103 (1) through (4) of this act do not apply to pseudonymous data in cases where the controller is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing such information.

(3) A controller that uses pseudonymous data or deidentified data must exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or deidentified data are subject and must take appropriate steps to address any breaches of contractual commitments.

NEW SECTION. **Sec. 109.** DATA PROTECTION ASSESSMENTS. (1) Controllers must conduct and document a data protection assessment of each of the following processing activities involving personal data:

- (a) The processing of personal data for purposes of targeted advertising;
- (b) The processing of personal data for the purposes of the sale of personal data;
- (c) The processing of personal data for purposes of profiling, where such profiling presents a reasonably foreseeable risk of: (i) Unfair or deceptive treatment of, or disparate impact on, consumers; (ii) financial, physical, or reputational injury to consumers; (iii) a physical or other intrusion upon the solitude or seclusion, or the private affairs or concerns, of consumers, where such intrusion would be offensive to a reasonable person; or (iv) other substantial injury to consumers;
- (d) The processing of sensitive data; and
- (e) Any processing activities involving personal data that present a heightened risk of harm to consumers.

Such data protection assessments must take into account the type of personal data to be processed by the controller, including the extent to which the personal data are sensitive data, and the

context in which the personal data are to be processed.

(2) Data protection assessments conducted under subsection (1) of this section must identify and weigh the benefits that may flow directly and indirectly from the processing to the controller, consumer, other stakeholders, and the public against the potential risks to the rights of the consumer associated with such processing, as mitigated by safeguards that can be employed by the controller to reduce such risks. The use of deidentified data and the reasonable expectations of consumers, as well as the context of the processing and the relationship between the controller and the consumer whose personal data will be processed, must be factored into this assessment by the controller.

(3) The attorney general may request, in writing, that a controller disclose any data protection assessment that is relevant to an investigation conducted by the attorney general. The controller must make a data protection assessment available to the attorney general upon such a request. The attorney general may evaluate the data protection assessments for compliance with the responsibilities contained in section 107 of this act and, if it serves a civil investigative demand, with RCW 19.86.110. Data protection assessments are confidential and exempt from public inspection and copying under chapter 42.56 RCW. The disclosure of a data protection assessment pursuant to a request from the attorney general under this subsection does not constitute a waiver of the attorney-client privilege or work product protection with respect to the assessment and any information contained in the assessment unless otherwise subject to case law regarding the applicability of attorney-client privilege or work product protections.

(4) Data protection assessments conducted by a controller for the purpose of compliance with other laws or regulations may qualify under this section if they have a similar scope and effect.

NEW SECTION. Sec. 110. LIMITATIONS AND APPLICABILITY. (1) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to:

(a) Comply with federal, state, or local laws, rules, or regulations;

(b) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities;

(c) Cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local laws, rules, or regulations;

(d) Investigate, establish, exercise, prepare for, or defend legal claims;

(e) Provide a product or service specifically requested by a consumer, perform a contract to which the consumer is a party, or take steps at the request of the consumer prior to entering into a contract;

(f) Take immediate steps to protect an interest that is essential for the life of the consumer or of another natural person, and where the processing cannot be manifestly based on another legal basis;

(g) Prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity; preserve the integrity or security of systems; or investigate, report, or prosecute those responsible for any such action;

(h) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines: (i) If the research is likely to provide substantial benefits that do not exclusively accrue to the controller; (ii) the expected benefits of the research outweigh the privacy risks; and (iii) if the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification; or

(i) Assist another controller, processor, or third party with any of the obligations under this subsection.

(2) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to collect, use, or retain data to:

(a) Identify and repair technical errors that impair existing or intended functionality; or

(b) Perform solely internal operations that are reasonably aligned with the expectations of the consumer based on the consumer's existing relationship with the controller, or are otherwise compatible with processing in furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party when those internal operations are performed during, and not following, the consumer's relationship with the controller.

(3) The obligations imposed on controllers or processors under this chapter do not apply where compliance by the controller or processor with this chapter would violate an evidentiary privilege under Washington law and do not prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under Washington law as part of a privileged communication.

(4) A controller or processor that discloses personal data to a third-party controller or processor in compliance with the requirements of this chapter is not in violation of this chapter if the recipient processes such personal data in violation of this chapter, provided that, at the time of disclosing the personal data, the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation. A third-party controller or processor receiving personal data from a controller or processor in compliance with the requirements of this chapter is likewise not in violation of this chapter for the obligations of the controller or processor from which it receives such personal data.

(5) Obligations imposed on controllers and processors under this chapter shall not:

(a) Adversely affect the rights or freedoms of any persons, such as exercising the right of free speech pursuant to the First Amendment to the United States Constitution; or

(b) Apply to the processing of personal data by a natural person in the course of a purely personal or household activity.

(6) Processing personal data solely for the purposes expressly identified in subsection (1)(a) through (g) of this section does not, by itself, make an entity a controller with respect to the processing.

(7) If a controller processes personal data pursuant to an exemption in this section, the controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (8) of this section.

(8) (a) Personal data that is processed by a controller pursuant to this section must not be processed for any purpose other than those expressly listed in this section.

(b) Personal data that is processed by a controller pursuant to this section may be processed solely to the extent that such processing is: (i) Necessary, reasonable, and proportionate to the purposes listed in this section; (ii) adequate, relevant, and limited to what is necessary in relation to the specific purpose or purposes listed in this section; and (iii) insofar as possible, taking into account the nature and purpose of processing the personal data, subjected to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data, and to reduce reasonably foreseeable risks of harm to consumers.

NEW SECTION. Sec. 111. PRIVATE RIGHT OF ACTION. (1) Except as provided in subsection (2) of this section, nothing in this chapter creates an independent cause of action, except for the actions brought by the attorney general to enforce this chapter. Except as provided in subsection (2) of this section, no person, except for the attorney general, may enforce the rights and protections created by this chapter in any action. However, nothing in this chapter limits any other independent causes of action enjoyed by any person, including any constitutional, statutory, administrative, or common law rights or causes of action. The rights and protections in this chapter are not exclusive, and to the extent that a person has the rights and protections in

this chapter because of another law other than this chapter, the person continues to have those rights and protections notwithstanding the existence of this chapter.

(2) A consumer alleging a violation of section 103 or 107 (6), (8), or (9) of this act may bring a civil action in any court of competent jurisdiction. Remedies shall be limited to appropriate injunctive relief. The court shall also award reasonable attorneys' fees and costs to any prevailing plaintiff.

NEW SECTION. Sec. 112. ENFORCEMENT.

(1) Except as provided in section 111 of this act, chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW.

(2) In actions brought by the attorney general, the legislature finds: (a) 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, and (b) a violation of this chapter is not reasonable in relation to the development and preservation of business, 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.

(3) The legislative declarations in this section shall not apply to any claim or action by any party other than the attorney general alleging that conduct regulated by this chapter violates chapter 19.86 RCW, and this chapter does not incorporate RCW 19.86.093.

(4) Until July 31, 2023, in the event of a controller's or processor's violation under this chapter, prior to filing a complaint, the attorney general must provide the controller or processor with a warning letter identifying the specific provisions of this chapter the attorney general alleges have been or are being violated. If, after 30 days of issuance of the warning letter, the attorney general believes the controller or processor has failed to cure any alleged violation, the attorney general may bring an action against the controller or processor as provided under this chapter.

(5) Beginning July 31, 2023, in determining a civil penalty under this chapter, the court must consider, as mitigating factors, a controller's or

processor's good faith efforts to comply with the requirements of this chapter and any actions to cure or remedy the violations before an action is filed.

(6) All receipts from the imposition of civil penalties under this chapter must be deposited into the consumer privacy account created in section 113 of this act.

NEW SECTION. Sec. 113. CONSUMER PRIVACY ACCOUNT. The consumer privacy account is created in the state treasury. All receipts from the imposition of civil penalties under this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account may only be used for the purposes of recovery of costs and attorneys' fees accrued by the attorney general in enforcing this chapter and for the office of privacy and data protection as created in RCW 43.105.369. Moneys may not be used to supplant general fund appropriations to either agency.

NEW SECTION. Sec. 114. PREEMPTION.

(1) Except as provided in this section, this chapter supersedes and preempts laws, ordinances, regulations, or the equivalent adopted by any local entity regarding the processing of personal data by controllers or processors.

(2) Laws, ordinances, or regulations regarding the processing of personal data by controllers or processors that are adopted by any local entity prior to July 1, 2020, are not superseded or preempted.

NEW SECTION. Sec. 115. 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. 116. PRIVACY OFFICE REPORT.

(1) The state office of privacy and data protection, in collaboration with the office of the attorney general, shall research and examine existing analysis on the development of technology, such as a browser setting, browser extension, or global device setting, indicating a consumer's affirmative, freely given, and unambiguous choice to opt out of the processing of personal data for the purposes of targeted advertising, the sale of personal data, or profiling in furtherance of decisions that produce legal effects concerning consumers or similarly significant effects concerning

consumers, and the effectiveness of allowing a consumer to designate a third party to exercise a consumer right on their behalf. A contracted study is not required.

(2) The office of privacy and data protection shall submit a report of its findings and will identify specific recommendations to the governor and the appropriate committees of the legislature by December 1, 2022.

NEW SECTION. Sec. 117. A new section is added to chapter 42.56 RCW to read as follows:

Data protection assessments submitted by a controller to the attorney general in accordance with requirements under section 109 of this act are exempt from disclosure under this chapter.

NEW SECTION. Sec. 118. A new section is added to chapter 44.28 RCW to read as follows:

(1) By December 1, 2023, the joint committee must review the efficacy of the attorney general providing controllers and processors with warning letters and 30 days to cure alleged violations in the warning letters pursuant to section 112 of this act and report its findings to the governor and the appropriate committees of the legislature.

(2) The report must include, but not be limited to:

(a) The number of warning letters the attorney general sent to controllers and processors;

(b) A list of the controller and processor names that received the warning letters;

(c) The categories of violations and the number of violations per category;

(d) The number of actions brought by the attorney general as authorized in this act due to a controller or processor not curing the alleged violations within 30 days;

(e) The types of resources, including associated costs, expended when providing warning letters and tracking compliance; and

(f) A recommendation on whether the warning letters provided by the attorney general should be continued.

(3) The office of the attorney general shall provide the joint committee any

data within their purview that the joint committee considers necessary to conduct the review.

(4) This section expires June 30, 2024.

PART 2

Data Privacy Regarding Public Health Emergency—Private Sector

NEW SECTION. Sec. 201. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authenticate" means to use reasonable means to determine that a request to exercise any of the rights in section 203 of this act is being made by the consumer who is entitled to exercise the rights with respect to the covered data at issue.

(2) "Business associate" has the same meaning as in Title 45 C.F.R. Part 160, established pursuant to the federal health insurance portability and accountability act of 1996.

(3) "Child" has the same meaning as defined in the children's online privacy protection act, Title 15 U.S.C. Sec. 6501 through 6506.

(4) "Consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer signifies agreement to the processing of personal data relating to the consumer for a narrowly defined particular purpose. Acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information, does not constitute consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute consent. Likewise, agreement obtained through dark patterns does not constitute consent.

(5) (a) "Consumer" means a natural person who is a Washington resident acting only in an individual or household context.

(b) "Consumer" does not include a natural person acting in a commercial or employment context.

(6) "Controller" means the natural or legal person that, alone or jointly with others, determines the purposes and means of the processing of covered data.

(7) "Covered data" includes personal data and one or more of the following: Specific geolocation data; proximity data; or personal health data.

(8) "Covered entity" has the same meaning as defined in Title 45 C.F.R. Part 160, established pursuant to the federal health insurance portability and accountability act of 1996.

(9) "Covered purpose" means processing of covered data concerning a consumer for the purposes of detecting symptoms of an infectious disease, enabling the tracking of a consumer's contacts with other consumers, or with specific locations to identify in an automated fashion whom consumers have come into contact with, or digitally notifying, in an automated manner, a consumer who may have become exposed to an infectious disease, or other similar purposes directly related to a state of emergency declared by the governor pursuant to RCW 43.06.010 and any restrictions imposed under the state of emergency declared by the governor pursuant to RCW 43.06.200 through 43.06.270.

(10) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such a person, provided that the controller that possesses the data: (a) Takes reasonable measures to ensure that the data cannot be associated with a natural person, household, or device; (b) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and (c) contractually obligates any recipients of the information to comply with all provisions of this subsection.

(11) "Delete" means to remove or destroy information such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in the course of business.

(12) "Health care facility" has the same meaning as defined in RCW 70.02.010.

(13) "Health care information" has the same meaning as defined in RCW 70.02.010.

(14) "Health care provider" has the same meaning as defined in RCW 70.02.010.

(15) "Identified or identifiable natural person" means a consumer who can be readily identified, directly or indirectly.

(16) "Known child" means a child under circumstances where a controller has actual knowledge of, or willfully disregards, the child's age.

(17) "Personal data" means any information that is linked or reasonably linkable to an identified or identifiable natural person.

"Personal data" does not include deidentified data or publicly available information.

(18) "Personal health data" means information relating to the past, present, or future diagnosis or treatment of a consumer regarding an infectious disease.

(19) "Process," "processed," or "processing" means any operation or set of operations that are performed on covered data or on sets of covered data by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of covered data.

(20) "Processor" means a natural or legal person that processes covered data on behalf of a controller.

(21) "Protected health information" has the same meaning as defined in Title 45 C.F.R. Sec. 160.103, established pursuant to the federal health insurance portability and accountability act of 1996.

(22) "Proximity data" means technologically derived information that identifies past or present proximity of one consumer to another, or the proximity of natural persons to other locations or objects.

(23) "Publicly available information" means information that is lawfully made available from federal, state, or local government records.

(24) "Secure" means encrypted in a manner that meets or exceeds the national institute of standards and technology standard or is otherwise modified so that the covered data is rendered unreadable, unusable, or undecipherable by an unauthorized person.

(25) "Sell" means the exchange of covered data for monetary or other valuable consideration by the controller to a third party.

(26) "Specific geolocation data" means information derived from technology including, but not limited to, global

positioning system level latitude and longitude coordinates or other mechanisms that directly identifies the specific location of a natural person within a geographic area that is equal to or less than the area of a circle with a radius of 1,850 feet. Specific geolocation data excludes the content of communications.

(27) "Third party" means a natural or legal person, public authority, agency, or body other than the consumer, controller, processor, or an affiliate of the processor or the controller.

NEW SECTION. **Sec. 202.** PROHIBITIONS. Except as provided in this chapter, it is unlawful for a controller or processor to:

(1) Process covered data for a covered purpose unless:

(a) The controller or processor provides the consumer with a privacy notice as required in section 207 of this act prior to or at the time of the processing; and

(b) The consumer provides consent for the processing;

(2) Disclose any covered data processed for a covered purpose to federal, state, or local law enforcement;

(3) Sell any covered data processed for a covered purpose; or

(4) Share any covered data processed for a covered purpose with another controller, processor, or third party unless the sharing is governed by contract pursuant to section 206 of this act and is disclosed to a consumer in the notice required in section 207 of this act.

NEW SECTION. **Sec. 203.** CONSUMER RIGHTS. (1) A consumer has the right to opt out of the processing of covered data concerning the consumer for a covered purpose.

(2) A consumer has the right to confirm whether or not a controller is processing covered data concerning the consumer for a covered purpose and access the covered data.

(3) A consumer has the right to request correction of inaccurate covered data concerning the consumer processed for a covered purpose.

(4) A consumer has the right to request deletion of covered data concerning the consumer processed for a covered purpose.

NEW SECTION. **Sec. 204.** EXERCISING CONSUMER RIGHTS. (1) A consumer may exercise the rights set forth in section 203 of this act by submitting a request, at any time, to a controller specifying which rights the consumer wishes to exercise.

(2) In the case of processing personal data of a known child, the parent or legal guardian of the known child may exercise the rights of this chapter on the child's behalf.

(3) In the case of processing personal data concerning a consumer subject to guardianship, conservatorship, or other protective arrangement under chapter 11.88, 11.92, or 11.130 RCW, the guardian or the conservator of the consumer may exercise the rights of this chapter on the consumer's behalf.

NEW SECTION. **Sec. 205.** RESPONDING TO REQUESTS. (1) Except as provided in this chapter, controllers that process covered data for a covered purpose must comply with a request to exercise the rights pursuant to section 203 of this act.

(2) (a) Controllers must provide one or more secure and reliable means for consumers to submit a request to exercise their rights under this chapter. These means must take into account the ways in which consumers interact with the controller and the need for secure and reliable communication of the requests.

(b) Controllers may not require a consumer to create a new account in order to exercise a right, but a controller may require a consumer to use an existing account to exercise the consumer's rights under this chapter.

(3) A controller must comply with a request to exercise the right in section 203(1) of this act as soon as feasibly possible, but no later than 15 days of receipt of the request.

(4) (a) A controller must inform a consumer of any action taken on a request to exercise any of the rights in section 203 (2) through (4) of this act without undue delay and in any event within 45 days of receipt of the request. That period may be extended once by 45 additional days where reasonably necessary, taking into account the

complexity and number of the requests. The controller must inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

(b) If a controller does not take action on the request of a consumer, the controller must inform the consumer without undue delay and within 45 days of receipt of the request, of the reasons for not taking action and instructions for how to appeal the decision with the controller as described in subsection (5) of this section.

(c) Information provided under this section must be provided by the controller to the consumer free of charge, up to twice annually. Where requests from a consumer are manifestly unfounded or excessive, because of their repetitive character, the controller may either: (i) Charge a reasonable fee to cover the administrative costs of complying with the request; or (ii) refuse to act on the request. The controller bears the burden of demonstrating the manifestly unfounded or excessive character of the request.

(d) A controller is not required to comply with a request to exercise any of the rights under section 203 (1) through (4) of this act if the controller is unable to authenticate the request using commercially reasonable efforts. In such a case, the controller may request the provision of additional information reasonably necessary to authenticate the request.

(5)(a) Controllers must establish an internal process whereby consumers may appeal a refusal to take action on a request to exercise any of the rights under section 203 of this act within a reasonable period of time after the consumer's receipt of the notice sent by the controller under subsection (4)(b) of this section.

(b) The appeal process must be conspicuously available and as easy to use as the process for submitting such a request under this section.

(c) Within 30 days of receipt of an appeal, a controller must inform the consumer of any action taken or not taken in response to the appeal, along with a written explanation of the reasons in support thereof. That period may be extended by 60 additional days where reasonably necessary, taking into account the complexity and number of the

requests serving as the basis for the appeal. The controller must inform the consumer of such an extension within 30 days of receipt of the appeal, together with the reasons for the delay. The controller must also provide the consumer with an email address or other online mechanism through which the consumer may submit the appeal, along with any action taken or not taken by the controller in response to the appeal and the controller's written explanation of the reasons in support thereof, to the attorney general.

(d) When informing a consumer of any action taken or not taken in response to an appeal pursuant to (c) of this subsection, the controller must clearly and prominently provide the consumer with information about how to file a complaint with the consumer protection division of the attorney general's office. The controller must maintain records of all such appeals and how it responded to them for at least 24 months and shall, upon request, compile and provide a copy of such records to the attorney general.

NEW SECTION. **Sec. 206.**
RESPONSIBILITY ACCORDING TO ROLE. (1) Controllers and processors are responsible for meeting their respective obligations established under this chapter.

(2) Processors are responsible under this chapter for adhering to the instructions of the controller and assisting the controller to meet their obligations under this chapter. This assistance includes the following:

(a) Taking into account the nature of the processing, the processor shall assist the controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's obligation to respond to consumer requests to exercise their rights pursuant to section 203 of this act; and

(b) Taking into account the nature of processing and the information available to the processor, the processor shall assist the controller in meeting the controller's obligations in relation to the security of processing the personal data and in relation to the notification of a breach of the security of the system pursuant to RCW 19.255.010.

(3) Notwithstanding the instructions of the controller, a processor shall:

(a) Ensure that each person processing the personal data is subject to a duty of confidentiality with respect to the data; and

(b) Engage a subcontractor only after providing the controller with an opportunity to object and pursuant to a written contract in accordance with subsection (5) of this section that requires the subcontractor to meet the obligations of the processor with respect to the personal data.

(4) Taking into account the context of processing, the controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and establish a clear allocation of the responsibilities between them to implement such measures.

(5) Processing by a processor must be governed by a contract between the controller and the processor that is binding on both parties and that sets out the processing instructions to which the processor is bound, including the nature and purpose of the processing, the type of personal data subject to the processing, the duration of the processing, and the obligations and rights of both parties. In addition, the contract must include the requirements imposed by this subsection and subsections (3) and (4) of this section, as well as the following requirements:

(a) At the choice of the controller, the processor shall delete or return all personal data to the controller as requested at the end of the provision of services, unless retention of the personal data is required by law;

(b) (i) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations in this chapter; and

(ii) The processor shall allow for, and contribute to, reasonable audits and inspections by the controller or the controller's designated auditor. Alternatively, the processor may, with the controller's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the processor's expense, an audit of the processor's policies and technical and organizational measures in support of the obligations under this chapter using an appropriate and accepted control standard or framework and audit procedure

for the audits as applicable, and provide a report of the audit to the controller upon request.

(6) In no event may any contract relieve a controller or a processor from the liabilities imposed on them by virtue of its role in the processing relationship as defined by this chapter.

(7) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal data is to be processed. A person that is not limited in its processing of personal data pursuant to a controller's instructions, or that fails to adhere to such instructions, is a controller and not a processor with respect to a specific processing of data. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of personal data, it is a controller with respect to the processing.

NEW SECTION. Sec. 207.
RESPONSIBILITIES OF CONTROLLERS. (1) Controllers that process covered data for a covered purpose must provide consumers with a clear and conspicuous privacy notice that includes, at a minimum:

(a) How a consumer may exercise the rights contained in section 203 of this act, including how a consumer may appeal a controller's action with regard to the consumer's request;

(b) The categories of covered data processed by the controller;

(c) The purposes for which the categories of covered data are processed;

(d) The categories of covered data that the controller shares with third parties, if any; and

(e) The categories of third parties, if any, with whom the controller shares covered data.

(2) A controller's collection of covered data must be limited to what is reasonably necessary in relation to the covered purposes for which the data is processed.

(3) A controller's collection of covered data must be adequate, relevant,

and limited to what is reasonably necessary in relation to the covered purpose for which the data is processed.

(4) Except as provided in this chapter, a controller may not process covered data for purposes that are not reasonably necessary to, or compatible with, the covered purposes for which the personal data is processed unless the controller obtains the consumer's consent. Controllers may not process covered data or deidentified data that was processed for a covered purpose for purposes of marketing, developing new products or services, or engaging in commercial product or market research.

(5) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of covered data. The data security practices must be appropriate to the volume and nature of the personal data at issue.

(6) A controller must delete or deidentify all covered data processed for a covered purpose when the data is no longer being used for the covered purpose.

(7) A controller may not process personal data on the basis of a consumer's or a class of consumers' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, lawful source of income, or disability, in a manner that unlawfully discriminates against the consumer or class of consumers with respect to the offering or provision of: (a) Housing; (b) employment; (c) credit; (d) education; or (e) the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

(8) Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this chapter is deemed contrary to public policy and is void and unenforceable.

NEW SECTION. Sec. 208. LIMITATIONS AND APPLICABILITY. (1) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to:

(a) Comply with federal, state, or local laws, rules, or regulations; or

(b) Process deidentified information to engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines: (i) If the research is likely to provide substantial benefits that do not exclusively accrue to the controller; (ii) the expected benefits of the research outweigh the privacy risks; and (iii) if the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification.

(2) This chapter does not apply to:

(a) Information that meets the definition of:

(i) Protected health information for purposes of the federal health insurance portability and accountability act of 1996 and health insurance portability and accountability act of 1996 and related regulations;

(ii) Health care information for purposes of chapter 70.02 RCW;

(iii) Identifiable private information for purposes of the federal policy for the protection of human subjects, 45 C.F.R. Part 46; identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by the international council for harmonization; the protection of human subjects under 21 C.F.R. Parts 50 and 56; or personal data used or shared in research conducted in accordance with one or more of the requirements set forth in this subsection; or

(iv) Information that is (A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Sec. 164, and (B) derived from any of the health care-related information listed in this subsection (2)(a);

(b) Information originating from, and intermingled to be indistinguishable

with, information under (a) of this subsection that is maintained by:

(i) A covered entity or business associate as defined by the health insurance portability and accountability act of 1996 and related regulations;

(ii) A health care facility or health care provider as defined in RCW 70.02.010; or

(iii) A program or a qualified service organization as defined by 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

(c) Information used only for public health activities and purposes as described in 45 C.F.R. Sec. 164.512; or

(d) Data maintained for employment records purposes.

(3) Processing covered data solely for the purposes expressly identified in subsection (1) of this section does not, by itself, make an entity a controller with respect to the processing.

(4) If a controller processes covered data pursuant to an exemption in subsection (1) of this section, the controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (2) of this section.

(5)(a) Covered data that is processed by a controller pursuant to this section must not be processed for any purpose other than those expressly listed in this section.

(b) Covered data that is processed by a controller pursuant to this section may be processed solely to the extent that such processing is: (i) Necessary, reasonable, and proportionate to the purposes listed in this section; (ii) adequate, relevant, and limited to what is necessary in relation to the specific purpose or purposes listed in this section; and (iii) insofar as possible, taking into account the nature and purpose of processing the personal data, subjected to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data, and to reduce reasonably foreseeable risks of harm to consumers.

NEW SECTION. Sec. 209. PRIVATE RIGHT OF ACTION. (1) Except as provided in subsection (2) of this section, nothing

in this chapter creates an independent cause of action, except for the actions brought by the attorney general to enforce this chapter. Except as provided in subsection (2) of this section, no person, except for the attorney general, may enforce the rights and protections created by this chapter in any action. However, nothing in this chapter limits any other causes of action enjoyed by any person, including any constitutional, statutory, administrative, or common law rights or causes of action. The rights and protections in this chapter are not exclusive, and to the extent that a person has the rights and protections in this chapter because of another law other than this chapter, the person continues to have those rights and protections notwithstanding the existence of this chapter.

(2) A consumer alleging a violation of section 203 or 207(7) of this act may bring a civil action in any court of competent jurisdiction. Remedies shall be limited to appropriate injunctive relief. The court shall also award reasonable attorneys' fees and costs to any prevailing plaintiff.

NEW SECTION. Sec. 210. ENFORCEMENT.

(1) Except as provided in section 209 of this act, this chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW.

(2) In actions brought by the attorney general, the legislature finds: (a) 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, and (b) a violation of this chapter is not reasonable in relation to the development and preservation of business, 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.

(3) The legislative declarations in this section shall not apply to any claim or action by any party other than the attorney general alleging that conduct regulated by this chapter violates chapter 19.86 RCW, and this chapter does not incorporate RCW 19.86.093.

(4) Until July 31, 2023, in the event of a controller's or processor's violation under this chapter, prior to filing a complaint, the attorney general

must provide the controller or processor with a warning letter identifying the specific provisions of this chapter the attorney general alleges have been or are being violated. If, after 30 days of issuance of the warning letter, the attorney general believes the controller or processor has failed to cure any alleged violation, the attorney general may bring an action against the controller or processor as provided under this chapter.

(5) Beginning July 31, 2023, in determining a civil penalty under this chapter, the court must consider, as mitigating factors, a controller's or processor's good faith efforts to comply with the requirements of this chapter and any actions to cure or remedy the violations before an action is filed.

(6) All receipts from the imposition of civil penalties under this chapter must be deposited into the consumer privacy account created in section 113 of this act.

NEW SECTION. **Sec. 211.** PREEMPTION.

(1) Except as provided in this section, this chapter supersedes and preempts laws, ordinances, regulations, or the equivalent adopted by any local entity regarding the processing of covered data for a covered purpose by controllers or processors.

(2) Laws, ordinances, or regulations regarding the processing of covered data for a covered purpose by controllers or processors that are adopted by any local entity prior to July 1, 2020, are not superseded or preempted.

NEW SECTION. **Sec. 212.** 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.

PART 3

Data Privacy Regarding Public Health Emergency—Public Sector

NEW SECTION. **Sec. 301.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Consent" means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer signifies agreement to the processing of personal data relating to the consumer for a narrowly defined

particular purpose. Acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information, does not constitute consent. Hovering over, muting, pausing, or closing a given piece of content does not constitute consent. Likewise, agreement obtained through dark patterns does not constitute consent.

(2) "Controller" means the local government, state agency, or institutions of higher education that, alone or jointly with others, determines the purposes and means of the processing of technology-assisted contact tracing information.

(3) (a) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable natural person, or a device linked to such a person, provided that the controller that possesses the data: (i) Takes reasonable measures to ensure that the data cannot be associated with a natural person, household, or device; (ii) publicly commits to maintain and use the data only in a deidentified fashion and not attempt to reidentify the data; and (iii) except as provided in (b) of this subsection, contractually obligates any recipients of the information to comply with all provisions of this subsection.

(b) For the purposes of this subsection, the obligations imposed under (a)(iii) of this subsection do not apply when a controller discloses deidentified data to the public pursuant to chapter 42.56 RCW or other state disclosure laws.

(4) "Delete" means to remove or destroy information such that it is not maintained in human or machine-readable form and cannot be retrieved or utilized in the course of business.

(5) "Identified or identifiable natural person" means an individual who can be readily identified, directly or indirectly.

(6) "Individual" means a natural person who is a Washington resident acting only in an individual or household context. "Individual" does not include a natural person acting in a commercial or employment context.

(7) "Institutions of higher education" has the same meaning as defined in RCW 28B.92.030.

(8) "Local government" has the same meaning as in RCW 39.46.020.

(9) "Local health departments" has the same meaning as in RCW 70.05.010.

(10)(a) "Process," "processed," or "processing" means any operation or set of operations that are performed on technology-assisted contact tracing information by automated means, such as the collection, use, storage, disclosure, analysis, deletion, or modification of technology-assisted contact tracing information.

(b) "Processing" does not include means such as recognized investigatory measures intended to gather information to facilitate investigations including, but not limited to, traditional in-person, email, or telephonic activities used as of the effective date of this section by the department of health, created under chapter 43.70 RCW, or local health departments to provide for the control and prevention of any dangerous, contagious, or infectious disease.

(11) "Processor" means a natural or legal person, local government, state agency, or institutions of higher education that processes technology-assisted contact tracing information on behalf of a controller.

(12) "Secure" means encrypted in a manner that meets or exceeds the national institute of standards and technology standard or is otherwise modified so that the technology-assisted contact tracing information is rendered unreadable, unusable, or undecipherable by an unauthorized person.

(13) "Sell" means the exchange of technology-assisted contact tracing information for monetary or other valuable consideration by the controller to a third party. For the purposes of this subsection, "sell" does not include the recovery of fees by a controller.

(14) "State agency" has the same meaning as defined in RCW 43.105.020.

(15) "Technology-assisted contact tracing" means the use of a digital application or other electronic or digital platform that is capable of independently transmitting information and is offered to individuals for the purpose of notifying individuals who may

have had contact with an infectious person through data collection and analysis as a means of controlling the spread of a communicable disease.

(16) "Technology-assisted contact tracing information" means any information, data, or metadata received through technology-assisted contact tracing.

(17) "Third party" means a natural or legal person, public authority, agency, or body other than the individual, controller, processor, or an affiliate of the processor or the controller.

NEW SECTION. Sec. 302. PROHIBITIONS. Except as provided in this chapter, it is unlawful for a controller or processor to:

(1) Process technology-assisted contact tracing information unless:

(a) The controller or processor provides the individual with a privacy notice prior to or at the time of the processing; and

(b) The individual provides consent for the processing;

(2) Disclose any technology-assisted contact tracing information to federal, state, or local law enforcement;

(3) Sell any technology-assisted contact tracing information; or

(4) Share any technology-assisted contact tracing information with another controller, processor, or third party unless the sharing is governed by a contract or data-sharing agreement as prescribed in section 303 of this act and is disclosed to an individual in the notice required in section 304 of this act.

NEW SECTION. Sec. 303. RESPONSIBILITY ACCORDING TO ROLE. (1) Controllers and processors are responsible for meeting their respective obligations established under this chapter.

(2) Processors are responsible under this chapter for adhering to the instructions of the controller and assisting the controller to meet its obligations under this chapter. This assistance must include the processor assisting the controller in meeting the controller's obligations in relation to the security of processing technology-assisted contact tracing information and in relation to the notification of a

breach of the security of the system pursuant to RCW 42.56.590.

(3) Notwithstanding the instructions of the controller, a processor shall:

(a) Ensure that each person processing the technology-assisted contact tracing information is subject to a duty of confidentiality with respect to the information; and

(b) Engage a subcontractor only after providing the controller with an opportunity to object and pursuant to a written contract in accordance with subsection (5) of this section that requires the subcontractor to meet the obligations of the processor with respect to the technology-assisted contact tracing information.

(4) Taking into account the context of processing, the controller and the processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and establish a clear allocation of the responsibilities between them to implement such measures.

(5) Processing by a processor must be governed by a contract or data-sharing agreement between the controller and the processor that is binding on both parties and that sets out the processing instructions to which the processor is bound, including the nature and purpose of the processing, the type of data subject to the processing, the duration of the processing, and the obligations and rights of both parties. In addition, the contract or data-sharing agreement must include the requirements imposed by this subsection and subsections (3) and (4) of this section, as well as the following requirements:

(a) At the choice of the controller, the processor shall delete or return all technology-assisted contact tracing information to the controller as requested at the end of the provision of services, unless retention of the technology-assisted contact tracing information is required by law;

(b) (i) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations in this chapter; and

(ii) The processor shall allow for, and contribute to, reasonable audits and inspections by the controller or the

controller's designated auditor. Alternatively, the processor may, with the controller's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the processor's expense, an audit of the processor's policies and technical and organizational measures in support of the obligations under this chapter using an appropriate and accepted control standard or framework and audit procedure for the audits as applicable, and provide a report of the audit to the controller upon request.

(6) In no event may any contract or data-sharing agreement relieve a controller or a processor from the liabilities imposed on them by virtue of its role in the processing relationship as defined in this chapter.

(7) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which technology-assisted contact tracing information is to be processed. A person that is not limited in its processing of technology-assisted contact tracing information pursuant to a controller's instructions, or that fails to adhere to such instructions, is a controller and not a processor with respect to processing of technology-assisted contact tracing information. A processor that continues to adhere to a controller's instructions with respect to processing of technology-assisted contact tracing information remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of technology-assisted contact tracing information, it is a controller with respect to the processing.

NEW SECTION. **Sec. 304.**
RESPONSIBILITIES OF CONTROLLERS. (1) Controllers that process technology-assisted contact tracing information must provide individuals with a clear and conspicuous privacy notice that includes, at a minimum:

(a) The categories of technology-assisted contact tracing information processed by the controller;

(b) The purposes for which the categories of technology-assisted contact tracing information are processed;

(c) The categories of technology-assisted contact tracing information that the controller shares with third parties, if any; and

(d) The categories of third parties, if any, with whom the controller shares technology-assisted contact tracing information.

(2) A controller's collection of technology-assisted contact tracing information must be limited to what is reasonably necessary in relation to the technology-assisted contact tracing purpose for which the information is processed.

(3) A controller's collection of technology-assisted contact tracing information must be adequate, relevant, and limited to what is reasonably necessary in relation to the technology-assisted contact tracing purposes for which the information is processed.

(4) Except as provided in this chapter, a controller may not process technology-assisted contact tracing information for purposes that are not reasonably necessary to, or compatible with, the technology-assisted contact tracing purposes for which the technology-assisted contact tracing information is processed unless the controller obtains the individual's consent. Controllers may not process technology-assisted contact tracing information or deidentified data that was processed for a technology-assisted contact tracing purpose for purposes of marketing, developing new products or services, or engaging in commercial product or market research.

(5) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of technology-assisted contact tracing information. These data security practices must be appropriate to the volume and nature of the data at issue.

(6) A controller must delete or deidentify all technology-assisted contact tracing information when the information is no longer being used for a technology-assisted contact tracing purpose and has met records retention as required by federal or state law.

(7) A controller may not process technology-assisted contact tracing

information on the basis of an individual's or a class of individuals' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, lawful source of income, or disability, in a manner that unlawfully discriminates against the individual or class of individuals with respect to the offering or provision of: (a) Housing; (b) employment; (c) credit; (d) education; or (e) the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

NEW SECTION. Sec. 305. LIMITATIONS AND APPLICABILITY. (1) The obligations imposed on controllers or processors under this chapter do not restrict a controller's or processor's ability to:

(a) Comply with federal, state, or local laws, rules, or regulations; or

(b) Process deidentified information to engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board, human subjects research ethics review board, or a similar independent oversight entity that determines: (i) If the research is likely to provide substantial benefits that do not exclusively accrue to the controller; (ii) the expected benefits of the research outweigh the privacy risks; and (iii) the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification.

(2) Processing technology-assisted contact tracing information solely for the purposes expressly identified in this section does not, by itself, make an entity a controller with respect to such processing.

(3) If a controller processes technology-assisted contact tracing information pursuant to an exemption in this section, the controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (4) of this section.

(4)(a) Technology-assisted contact tracing information that is processed by a controller pursuant to this section

must not be processed for any purpose other than those expressly listed in this section.

(b) Technology-assisted contact tracing information that is processed by a controller pursuant to this section may be processed solely to the extent that such processing is: (i) Necessary, reasonable, and proportionate to the purposes listed in this section; (ii) adequate, relevant, and limited to what is necessary in relation to the specific purpose or purposes listed in this section; and (iii) insofar as possible, taking into account the nature and purpose of processing the technology-assisted contact tracing information, subjected to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data, and to reduce reasonably foreseeable risks of harm to consumers.

NEW SECTION. Sec. 306. LIABILITY. Where more than one controller or processor, or both a controller and a processor, involved in the same processing, is in violation of this chapter, the liability must be allocated among the parties according to principles of comparative fault.

NEW SECTION. Sec. 307. ENFORCEMENT. (1) Any waiver of the provisions of this chapter is contrary to public policy and is void and unenforceable.

(2)(a) Any individual injured by a violation of this chapter may institute a civil action to recover damages.

(b) Any controller that violates, proposes to violate, or has violated this chapter may be enjoined.

(c) The rights and remedies available under this chapter are cumulative to each other and to any other rights and remedies available under law.

NEW SECTION. Sec. 308. EXPIRATION. This chapter expires June 30, 2024.

NEW SECTION. Sec. 309. 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.

PART 4

Miscellaneous

NEW SECTION. Sec. 401. (1) Sections 101 through 114 of this act constitute a new chapter in Title 19 RCW.

(2) Sections 201 through 211 of this act constitute a new chapter in Title 19 RCW.

(3) Sections 301 through 308 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 402. Sections 1, 2, and 101 through 118 of this act take effect July 31, 2022.

NEW SECTION. Sec. 403. Sections 101 through 114 of this act do not apply to institutions of higher education or nonprofit corporations until July 31, 2026.

NEW SECTION. Sec. 404. Except for sections 1, 2, and 101 through 118 of this act, 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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representative Rude.

Referred to Committee on Rules for second reading.

April 1, 2021

SB 5063

Prime Sponsor, Senator Honeyford: Concerning the expiration date of the invasive species council. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking

Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

March 31, 2021

SSB 5066 Prime Sponsor, Committee on Law & Justice: Concerning a peace officer's duty to intervene. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 10.93 RCW to read as follows:

(1) Any identifiable on-duty peace officer who witnesses another peace officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.

(2) Any identifiable on-duty peace officer who witnesses any wrongdoing committed by another peace officer, or has a good faith reasonable belief that another peace officer committed wrongdoing, shall report such wrongdoing to the witnessing officer's supervisor or other supervisory peace officer in accordance with the witnessing peace officer's employing agency's policies and procedures for reporting such acts committed by a peace officer.

(3) A member of a law enforcement agency shall not discipline or retaliate in any way against a peace officer for intervening in good faith or for reporting wrongdoing in good faith as required by this section.

(4) A law enforcement agency shall send notice to the criminal justice training commission of any disciplinary decision resulting from a peace officer's failure to intervene or failure to report

as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105.

(5) For purposes of this section:

(a) "Excessive force" means force that exceeds the force permitted by law or policy of the witnessing officer's agency.

(b) "Peace officer" refers to any general authority Washington peace officer.

(c) "Wrongdoing" means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature.

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

(1) By December 1, 2021, the Washington state criminal justice training commission, in consultation with the Washington state patrol, the Washington association of sheriffs and police chiefs, and organizations representing state and local law enforcement officers, shall develop a written model policy on the duty to intervene, consistent with the provisions of section 1 of this act.

(2) By June 1, 2022, every state, county, and municipal law enforcement agency shall adopt and implement a written duty to intervene policy. The policy adopted may be the model policy developed under subsection (1) of this section. However, any policy adopted must, at a minimum, be consistent with the provisions of section 1 of this act.

(3) By January 31, 2022, the commission shall incorporate training on the duty to intervene in the basic law enforcement training curriculum. Peace officers who completed basic law enforcement training prior to January 31, 2022, must receive training on the duty to intervene by December 31, 2023."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff and Schmick.

MINORITY recommendation: Without recommendation. Signed by Representatives Corry, Assistant Ranking Minority Member; Jacobsen; Rude and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5071 Prime Sponsor, Committee on Ways & Means: Creating transition teams to assist specified persons under civil commitment. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Civil Rights & Judiciary.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 10.77.150 and 2010 c 263 s 5 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140 may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) In instances in which persons examined pursuant to RCW 10.77.140 have not made application to the secretary for conditional release, but the secretary, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, reasonably believes the person may be conditionally released, the secretary may submit a recommendation for release to the court of the county that ordered the person's commitment. The secretary's recommendation must include any proposed terms and conditions upon which the person

may be conditionally released. Conditional release may also include partial release for work, training, or educational purposes. Notice of the secretary's recommendation under this subsection must be provided to the person for whom the secretary has made the recommendation for release and to his or her attorney.

(3) (a) The court of the county which ordered the person's commitment, upon receipt of an application or recommendation for conditional release with the secretary's recommendation for conditional release terms and conditions, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary.

(b) The prosecuting attorney shall represent the state at such hearings and shall have the right to have the ~~((patient))~~ person examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine the person on his or her behalf.

(c) The issue to be determined at such a hearing is whether or not the person may be released conditionally to less restrictive alternative treatment under the supervision of a multidisciplinary transition team under conditions imposed by the court, including access to services under section 4 of this act without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security.

(d) ~~((The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so))~~ In cases that come before the court under subsection (1) or (2) of this section, the court may deny conditional release to a less restrictive alternative only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary.

(4) If the order of conditional release (~~((includes a))~~) provides for the conditional release of the person to a less restrictive alternative, including residential treatment or treatment in the community, the conditional release order must also include:

(a) A requirement for the committed person to (~~(report to a)~~) be supervised by a multidisciplinary transition team, including a specially trained community corrections officer, (~~(the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including)~~) a representative of the department of social and health services, and a representative of the community behavioral health agency providing treatment to the person under section 4 of this act.

(i) The court may omit appointment of the representative of the community behavioral health agency if the conditional release order does not require participation in behavioral health treatment;

(ii) The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community;

(b) A requirement for the person to comply with conditions of supervision established by the court which shall include at a minimum reporting as directed to a (~~(community corrections officer)~~) designated member of the transition team, remaining within prescribed geographical boundaries, and notifying the (~~(community corrections officer)~~) transition team prior to making any change in the (~~(offender's)~~) person's address or employment. If the (~~(order of conditional release includes a requirement for the committed person to report to a community corrections officer, the community corrections officer shall notify the secretary or the secretary's designee, if the)~~) person is not in compliance with the court-ordered conditions of release(~~(-)~~), the community corrections officer or another designated transition team member shall

notify the secretary or the secretary's designee; and

(~~((4))~~) (c) If the court (~~(determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other medical or mental health practitioner shall immediately upon the released person's failure to appear for the)~~) requires participation in behavioral health treatment, the name of the licensed or certified behavioral health agency responsible for identifying the services the person will receive under section 4 of this act, and a requirement that the person cooperate with the services planned by the licensed or certified behavioral health agency. The licensed or certified behavioral health agency must comply with the reporting requirements of RCW 10.77.160, and must immediately report to the court, prosecutor, and defense counsel any substantial withdrawal or disengagement from medication or treatment, or (~~(upon a)~~) any change in the person's mental health condition that renders (~~(the patient)~~) him or her a potential risk to the public (~~(report to the court, to the prosecuting attorney of the county in which the released person was committed, to the secretary, and to the supervising community corrections officer)~~).

(5) The role of the transition team appointed under subsection (4) of this section shall be to facilitate the success of the person on the conditional release order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances that may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan that may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(6) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under

this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a conditional release order. Another community corrections officer may be appointed if no specially trained officer is available.

(7) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial, or sooner with the support of the department.

(8) A person examined under RCW 10.77.140 or the department may make a motion for limited conditional release under this section, on the grounds that there is insufficient evidence that the person may be released conditionally to less restrictive alternative treatment under subsection (3)(c) of this section, but the person would benefit from the opportunity to exercise increased privileges while remaining under the custody and supervision of the department and with the supervision of the department these increased privileges can be exercised without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security. The department may respond to a person's application for conditional release by instead supporting limited conditional release.

Sec. 2. RCW 71.05.320 and 2020 c 302 s 45 are each amended to read as follows:

(1)(a) Subject to (b) of this subsection, if the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. The court may only enter an order for commitment based on a substance use disorder if there is an available approved substance use

disorder treatment program with adequate space for the person.

(c) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court has made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team as provided in subsection (6)(a)(i) of this section. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for

involuntary treatment on the grounds that the committed person:

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

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

(c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) (a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, subject to subsection (1)(b) of this section, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(i) In cases where the court has ordered less restrictive alternative treatment and has previously made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team to supervise and assist the person on the order for less restrictive treatment, which shall include a representative of the community behavioral health agency providing treatment under RCW 71.05.585, and a specially trained supervising community corrections officer. The court may omit the appointment of a community

corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community under (a)(ii) of this subsection.

(ii) The role of the transition team shall be to facilitate the success of the person on the less restrictive alternative order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances which may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan which may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(iii) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a less restrictive alternative order.

(b) At the end of the one hundred eighty-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

Sec. 3. RCW 71.05.320 and 2020 c 302 s 46 are each amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court has made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team as provided in subsection (6)(a)(i) of this section. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name

the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

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

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

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

(c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has

so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(i) In cases where the court has ordered less restrictive alternative treatment and has previously made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team to supervise and assist the person on the order for less restrictive treatment, which shall include a representative of the community behavioral health agency providing treatment under RCW 71.05.585, and a specially trained supervising community corrections officer. The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community under (a)(ii) of this subsection.

(ii) The role of the transition team shall be to facilitate the success of the person on the less restrictive alternative order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances which may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan which may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(iii) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a less restrictive alternative order.

(b) At the end of the one hundred eighty-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

NEW SECTION. Sec. 4. A new section is added to chapter 10.77 RCW to read as follows:

(1) Conditional release planning should start at admission and proceed in coordination between the department and the person's managed care organization, or behavioral health administrative services organization if the person is not eligible for medical assistance under chapter 74.09 RCW. If needed, the department shall assist the person to enroll in medical assistance in suspense status under RCW 74.09.670. The state hospital liaison for the managed care organization or behavioral health administrative services organization shall facilitate conditional release planning in collaboration with the department.

(2) Less restrictive alternative treatment pursuant to a conditional release order, at a minimum, includes the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the conditional treatment;
- (c) A psychiatric evaluation or a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan;
- (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW; and
- (h) Appointment of a transition team under RCW 10.77.150;

(i) Notification to the care coordinator assigned in (a) of this subsection and to the transition team as provided in RCW 10.77.150 if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(3) Less restrictive alternative treatment pursuant to a conditional release order may additionally include requirements to participate in the following services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance use disorder counseling;
- (e) Residential treatment;
- (f) Support for housing, benefits, education, and employment; and
- (g) Periodic court review.

(4) Nothing in this section prohibits items in subsection (2) of this section from beginning before the conditional release of the individual.

(5) If the person was provided with involuntary medication under RCW 10.77.094 or pursuant to a judicial order during the involuntary commitment period, the less restrictive alternative treatment pursuant to the conditional release order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(6) Less restrictive alternative treatment pursuant to a conditional release order must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(7) The care coordinator assigned to a person ordered to less restrictive alternative treatment pursuant to a

conditional release order must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(8) A care coordinator may disclose information and records related to mental health treatment under RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment pursuant to a conditional release order.

(9) For the purpose of this section, "care coordinator" means a representative from the department of social and health services who coordinates the activities of less restrictive alternative treatment pursuant to a conditional release order. The care coordinator coordinates activities with the person's transition team that are necessary for enforcement and continuation of the conditional release order and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

Sec. 5. RCW 10.77.060 and 2016 sp.s. c 29 s 408 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. If the court is advised by any party that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.

(c) The evaluator shall assess the defendant in a jail, detention facility, in the community, or in court to determine whether a period of inpatient commitment will be necessary to complete an accurate evaluation. If inpatient commitment is needed, the signed order of the court shall serve as authority for the evaluator to request the jail or detention facility to transport the defendant to a hospital or secure mental health facility for a period of commitment not to exceed fifteen days from the time of admission to the facility. Otherwise, the evaluator shall complete the evaluation.

(d) The court may commit the defendant for evaluation to a hospital or secure mental health facility without an assessment if: (i) The defendant is charged with murder in the first or second degree; (ii) the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or (iii) the court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant. The court shall not order an initial inpatient evaluation for any purpose other than a competency evaluation.

(e) The order shall indicate whether, in the event the defendant is committed to a hospital or secure mental health facility for evaluation, all parties agree to waive the presence of the defendant or to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

(f) When a defendant is ordered to be ~~((committed for inpatient evaluation))~~ evaluated under this subsection (1), or when a party or the court determines at first appearance that an order for evaluation under this subsection will be requested or ordered if charges are pursued, the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court

shall consider: (i) Recommendations of the evaluator regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the evaluation authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the evaluation shall include the following:

(a) A description of the nature of the evaluation;

(b) A diagnosis or description of the current mental status of the defendant;

(c) If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, and an evaluation and report by an expert or professional person has been provided concluding that the defendant was criminally insane at the time of the alleged offense, an opinion as to the defendant's sanity at the time of the act, and an opinion as to whether the defendant presents a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, provided that no opinion shall be rendered under this subsection (3)(d) unless the evaluator or court determines that the defendant is competent to stand trial;

(e) When directed by the court, if an evaluation and report by an expert or professional person has been provided concluding that the defendant lacked the capacity at the time of the offense to form the mental state necessary to commit the charged offense, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a designated crisis responder under chapter 71.05 RCW.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section and may choose to designate more than one evaluator.

Sec. 6. RCW 70.02.230 and 2020 c 256 s 402 are each amended to read as follows:

(1) ~~((Except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030, the))~~ The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies ~~((must be confidential))~~ may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed ~~((only))~~:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, including Indian health care providers, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;

(iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

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

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts, including tribal courts, as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the

federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or

release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) By a care coordinator under RCW 71.05.585 or section 4 of this act assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 or 10.77 RCW;

(l) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

~~((1))~~ (m) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients

buried in state hospital cemeteries fifty years after the death of a patient;

~~((m))~~ (n) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iv);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

~~((n))~~ (o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

~~((o))~~ (p) Pursuant to lawful order of a court, including a tribal court;

~~((p))~~ (q) To qualified staff members of the department, to the authority, to behavioral health administrative services organizations, to managed care organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be

transferred to a less restrictive or more appropriate treatment modality or facility;

~~((q))~~ (r) Within the mental health service agency or Indian health care provider facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

~~((r))~~ (s) Within the department and the authority as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or substance use disorder of persons who are under the supervision of the department;

~~((s))~~ (t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

~~((t))~~ (u) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

~~((u))~~ (v)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider, including an Indian health care provider, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility, health care provider, or Indian health care provider, or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure

coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2) ~~((+))~~ (v) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

~~((+))~~ (w) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in ~~((+))~~ (v) of this subsection;

~~((+))~~ (x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

~~((+))~~ (y) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

~~((+))~~ (z) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any

staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

~~((+))~~ (aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

~~((+))~~ (bb) (i) To the secretary of social and health services and the director of the health care authority for either program evaluation or research, or both so long as the secretary or director, where applicable, adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

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

that the person who received such services is identifiable.

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

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary, or director, where applicable;

~~((bb))~~ (cc) To any person if the conditions in RCW 70.02.205 are met;

~~((cc))~~ (dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450;

~~((dd))~~ (ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(7).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW 71.05.280(3) and 71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a

civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6) (a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

- (i) One thousand dollars; or
- (ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170.

Sec. 7. RCW 70.02.240 and 2019 c 381 s 20 are each amended to read as follows:

The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265. Confidential

information under this section may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) By a care coordinator under RCW 71.34.755 or section 4 of this act assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

(6) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

~~((6))~~ (7) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

~~((7))~~ (8) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign

an oath of confidentiality substantially as follows:

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

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

/s/";

~~((8))~~ (9) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

~~((9))~~ (10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

~~((10))~~ (11) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

~~((111))~~ (12) Upon the death of a minor, to the minor's next of kin;

~~((112))~~ (13) To a facility in which the minor resides or will reside;

~~((113))~~ (14) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iv);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

~~((114))~~ (15) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

~~((115))~~ (16) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

~~((116))~~ (17) Pursuant to a lawful order of a court.

Sec. 8. RCW 71.24.035 and 2020 c 256 s 202 are each amended to read as follows:

(1) The authority is designated as the state behavioral health authority which includes recognition as the single state authority for substance use disorders and state mental health authority.

(2) The director shall provide for public, client, tribal, and licensed or certified behavioral health agency participation in developing the state behavioral health program, developing related contracts, and any waiver request to the federal government under medicaid.

(3) The director shall provide for participation in developing the state behavioral health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state behavioral health program.

(4) The authority shall be designated as the behavioral health administrative services organization for a regional service area if a behavioral health administrative services organization fails to meet the authority's contracting requirements or refuses to exercise the responsibilities under its contract or state law, until such time as a new behavioral health administrative services organization is designated.

(5) The director shall:

(a) Assure that any behavioral health administrative services organization, managed care organization, or community behavioral health program provides medically necessary services to medicaid recipients consistent with the state's medicaid state plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

(b) Develop contracts in a manner to ensure an adequate network of inpatient services, evaluation and treatment services, and facilities under chapter 71.05 RCW to ensure access to treatment, resource management services, and community support services;

(c) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for behavioral health services;

(d) Define administrative costs and ensure that the behavioral health administrative services organization does not exceed an administrative cost of ten percent of available funds;

(e) Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements. The audit procedure shall focus on the outcomes of service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

(f) Develop and maintain an information system to be used by the state and behavioral health administrative services organizations and managed care organizations that includes a tracking method which allows the authority to identify behavioral health clients' participation in any behavioral health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

(g) Monitor and audit behavioral health administrative services organizations as needed to assure compliance with contractual agreements authorized by this chapter;

(h) Monitor and audit access to behavioral health services for individuals eligible for medicaid who are not enrolled in a managed care organization;

(i) Adopt such rules as are necessary to implement the authority's responsibilities under this chapter;

(j) Administer or supervise the administration of the provisions relating to persons with substance use disorders and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(k) Require the behavioral health administrative services organizations and the managed care organizations to develop agreements with tribal, city, and county jails and the department of corrections to accept referrals for enrollment on behalf of a confined person, prior to the person's release;

(l) Require behavioral health administrative services organizations and managed care organizations, as applicable, to provide services as identified in RCW 71.05.585 and section 4 of this act to individuals committed for involuntary (~~commitment~~) treatment under less restrictive alternative court orders when:

(i) The individual is enrolled in the medicaid program; or

(ii) The individual is not enrolled in medicaid, does not have other insurance which can pay for the services, and the behavioral health administrative services organization has adequate available resources to provide the services; and

(m) Coordinate with the centers for medicare and medicaid services to provide that behavioral health aide services are eligible for federal funding of up to one hundred percent.

(6) The director shall use available resources only for behavioral health administrative services organizations and managed care organizations, except:

(a) To the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act; or

(b) To incentivize improved performance with respect to the client outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care coordination for individuals with complex care needs.

(7) Each behavioral health administrative services organization, managed care organization, and licensed or certified behavioral health agency shall file with the secretary of the department of health or the director, on request, such data, statistics, schedules, and information as the secretary of the department of health or the director reasonably requires. A behavioral health administrative services organization, managed care organization, or licensed or certified behavioral health agency which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the contractual remedies in RCW 74.09.871 or may have its service provider

certification or license revoked or suspended.

(8) The superior court may restrain any behavioral health administrative services organization, managed care organization, or service provider from operating without a contract, certification, or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(9) Upon petition by the secretary of the department of health or the director, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary of the department of health or the director authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any behavioral health administrative services organization, managed care organization, or service provider refusing to consent to inspection or examination by the authority.

(10) Notwithstanding the existence or pursuit of any other remedy, the secretary of the department of health or the director may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a behavioral health administrative services organization, managed care organization, or service provider without a contract, certification, or a license under this chapter.

(11) The authority shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(12) The authority, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities licensed under chapter 71.12 RCW or certified under chapter 71.05 RCW. The authority shall periodically share the

results of its efforts with the appropriate committees of the senate and the house of representatives.

(13) The authority may:

(a) Plan, establish, and maintain substance use disorder prevention and substance use disorder treatment programs as necessary or desirable;

(b) Coordinate its activities and cooperate with behavioral programs in this and other states, and make contracts and other joint or cooperative arrangements with state, tribal, local, or private agencies in this and other states for behavioral health services and for the common advancement of substance use disorder programs;

(c) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

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

(e) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide substance use disorder treatment programs.

Sec. 9. RCW 10.77.010 and 2019 c 325 s 5005 are each amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a

substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

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

(6) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

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

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(5).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

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

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

(13) "History of one or more violent acts" means violent acts committed

during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

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

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

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

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

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

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

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

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

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

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

(18) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who

has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

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

(c) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(19) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

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

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

(22) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.

(23) "Violent act" means behavior that: (a) (i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of

"bodily injury," as defined in RCW 9A.04.110.

(24) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

Sec. 10. RCW 10.77.195 and 2010 c 263 s 9 are each amended to read as follows:

For persons who have received court approval for conditional release, the secretary or the secretary's designee shall supervise the person's compliance with the court-ordered conditions of release in coordination with the multidisciplinary transition team appointed under RCW 10.77.150. The level of supervision provided by the secretary shall correspond to the level of the person's public safety risk. In undertaking supervision of persons under this section, the secretary shall coordinate with any treatment providers (~~(designated pursuant to RCW 10.77.150(3), any)~~ or department of corrections staff designated pursuant to RCW 10.77.150(~~(+2)~~)), and local law enforcement, if appropriate. The secretary shall adopt rules to implement this section.

Sec. 11. RCW 71.05.020 and 2020 c 302 s 3, 2020 c 256 s 301, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(21) "Drug addiction" means a disease, characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or

psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

(26) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time

spent, but not any violent acts committed, in a behavioral health facility, or in confinement as a result of a criminal conviction;

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected

possible date for discharge or release; and

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(44) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program

approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or

involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(52) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(53) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(54) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(55) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health

services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(57) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(58) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property;

(59) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

(60) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

Sec. 12. RCW 71.05.020 and 2020 c 302 s 3, 2020 c 256 s 301, 2020 c 80 s 51, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section,

secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist,

physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

such care as is essential for his or her health or safety;

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a

person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals

involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(52) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(53) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(54) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting

within the scope of therapeutic court duties;

(55) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(57) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(58) "Violent act" means behavior that resulted in homicide, attempted suicide,

injury, or substantial loss or damage to property;

(59) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

(60) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

Sec. 13. RCW 71.05.020 and 2020 c 302 s 4, 2020 c 302 s 3, 2020 c 256 s 301, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in

this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(13) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment

from a facility providing involuntary care and treatment;

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify

single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the

preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department

or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is

associated with significant impairment of judgment, reason, or behavior;

(52) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(53) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(56) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(58) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(59) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property;

(60) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

(61) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

Sec. 14. RCW 71.05.020 and 2020 c 302 s 4, 2020 c 302 s 3, 2020 c 256 s 301, 2020 c 80 s 51, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities

professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

(24) "Habilitative services" means those services provided by program

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as

evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a

physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of

a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior;

(52) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(53) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders,

including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(56) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(58) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(59) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property;

(60) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database.

(61) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

Sec. 15. RCW 71.05.740 and 2020 c 302 s 58 are each amended to read as follows:

(1) All behavioral health administrative services organizations in the state of Washington must forward historical behavioral health involuntary commitment information retained by the organization, including identifying information and dates of commitment to the authority. As soon as feasible, the behavioral health administrative services organizations must arrange to report new commitment data to the authority within twenty-four hours. Commitment information under this section does not need to be resent if it is already in the possession of the authority. Behavioral health administrative services organizations and the authority shall be immune from liability related to the sharing of commitment information under this section.

(2) The clerk of the court must share hearing outcomes in all hearings under this chapter with the local behavioral health administrative services organization that serves the region where the superior court is located, including in cases in which the designated crisis responder investigation occurred outside the region. The hearing outcome data must include the name of the facility to which a person has been committed.

Sec. 16. RCW 71.24.035 and 2020 c 256 s 202 are each amended to read as follows:

(1) The authority is designated as the state behavioral health authority which includes recognition as the single state authority for substance use disorders and state mental health authority.

(2) The director shall provide for public, client, tribal, and licensed or certified behavioral health agency participation in developing the state behavioral health program, developing related contracts, and any waiver request to the federal government under medicaid.

(3) The director shall provide for participation in developing the state behavioral health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state behavioral health program.

(4) The authority shall be designated as the behavioral health administrative services organization for a regional service area if a behavioral health administrative services organization fails to meet the authority's contracting requirements or refuses to exercise the responsibilities under its contract or state law, until such time as a new behavioral health administrative services organization is designated.

(5) The director shall:

(a) Assure that any behavioral health administrative services organization, managed care organization, or community behavioral health program provides medically necessary services to medicaid recipients consistent with the state's medicaid state plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

(b) Develop contracts in a manner to ensure an adequate network of inpatient services, evaluation and treatment services, and facilities under chapter 71.05 RCW to ensure access to treatment, resource management services, and community support services;

(c) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for behavioral health services;

(d) Define administrative costs and ensure that the behavioral health administrative services organization does not exceed an administrative cost of ten percent of available funds;

(e) Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements. The audit procedure shall focus on the outcomes of service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

(f) Develop and maintain an information system to be used by the state and behavioral health administrative services organizations and managed care organizations that includes a tracking method which allows the authority to identify behavioral health clients' participation in any behavioral health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

(g) Monitor and audit behavioral health administrative services organizations as needed to assure compliance with contractual agreements authorized by this chapter;

(h) Monitor and audit access to behavioral health services for individuals eligible for medicaid who are not enrolled in a managed care organization;

(i) Adopt such rules as are necessary to implement the authority's responsibilities under this chapter;

(j) Administer or supervise the administration of the provisions relating to persons with substance use disorders and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(k) Require the behavioral health administrative services organizations and the managed care organizations to develop agreements with tribal, city, and county jails and the department of corrections to accept referrals for enrollment on behalf of a confined person, prior to the person's release;

(l) Require behavioral health administrative services organizations and managed care organizations, as applicable, to provide services as identified in RCW 71.05.585 to individuals committed for involuntary

commitment under less restrictive alternative court orders when:

(i) The individual is enrolled in the medicaid program; or

(ii) The individual is not enrolled in medicaid((~~7~~)) and does not have other insurance which can pay for the services((~~, and the behavioral health administrative services organization has adequate available resources to provide the services~~)); and

(m) Coordinate with the centers for medicare and medicaid services to provide that behavioral health aide services are eligible for federal funding of up to one hundred percent.

(6) The director shall use available resources only for behavioral health administrative services organizations and managed care organizations, except:

(a) To the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act; or

(b) To incentivize improved performance with respect to the client outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care coordination for individuals with complex care needs.

(7) Each behavioral health administrative services organization, managed care organization, and licensed or certified behavioral health agency shall file with the secretary of the department of health or the director, on request, such data, statistics, schedules, and information as the secretary of the department of health or the director reasonably requires. A behavioral health administrative services organization, managed care organization, or licensed or certified behavioral health agency which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the contractual remedies in RCW 74.09.871 or may have its service provider certification or license revoked or suspended.

(8) The superior court may restrain any behavioral health administrative services organization, managed care organization, or service provider from

operating without a contract, certification, or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(9) Upon petition by the secretary of the department of health or the director, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary of the department of health or the director authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any behavioral health administrative services organization, managed care organization, or service provider refusing to consent to inspection or examination by the authority.

(10) Notwithstanding the existence or pursuit of any other remedy, the secretary of the department of health or the director may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a behavioral health administrative services organization, managed care organization, or service provider without a contract, certification, or a license under this chapter.

(11) The authority shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(12) The authority, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities licensed under chapter 71.12 RCW or certified under chapter 71.05 RCW. The authority shall periodically share the results of its efforts with the appropriate committees of the senate and the house of representatives.

(13) The authority may:

(a) Plan, establish, and maintain substance use disorder prevention and

substance use disorder treatment programs as necessary or desirable;

(b) Coordinate its activities and cooperate with behavioral programs in this and other states, and make contracts and other joint or cooperative arrangements with state, tribal, local, or private agencies in this and other states for behavioral health services and for the common advancement of substance use disorder programs;

(c) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

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

(e) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide substance use disorder treatment programs.

Sec. 17. RCW 71.24.045 and 2019 c 325 s 1008 are each amended to read as follows:

(1) The behavioral health administrative services organization contracted with the authority pursuant to RCW 71.24.381 shall:

(a) Administer crisis services for the assigned regional service area. Such services must include:

(i) A behavioral health crisis hotline for its assigned regional service area;

(ii) Crisis response services twenty-four hours a day, seven days a week, three hundred sixty-five days a year;

(iii) Services related to involuntary commitments under chapters 71.05 and 71.34 RCW;

(iv) Tracking of less restrictive alternative orders issued within the region by superior courts, and providing notification to a managed care organization in the region when one of its enrollees receives a less restrictive alternative order so that the managed care organization may ensure that the person is connected to services and that the requirements of RCW 71.05.585 are

complied with. If the person receives a less restrictive alternative order and is returning to another region, the behavioral health administrative services organization shall notify the behavioral health administrative services organization in the home region of the less restrictive alternative order so that the home behavioral health administrative services organization may notify the person's managed care organization or provide services if the person is not enrolled in medicaid and does not have other insurance which can pay for those services.

(v) Additional noncrisis behavioral health services, within available resources, to individuals who meet certain criteria set by the authority in its contracts with the behavioral health administrative services organization. These services may include services provided through federal grant funds, provisos, and general fund state appropriations;

~~((v))~~ (vi) Care coordination, diversion services, and discharge planning for nonmedicaid individuals transitioning from state hospitals or inpatient settings to reduce rehospitalization and utilization of crisis services, as required by the authority in contract; and

~~((vi))~~ (vii) Regional coordination, cross-system and cross-jurisdiction coordination with tribal governments, and capacity building efforts, such as supporting the behavioral health advisory board, the behavioral health ombuds, and efforts to support access to services or to improve the behavioral health system;

(b) Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, investigation, transportation, court-related, and other services provided as required under chapter 71.05 RCW;

(c) Coordinate services for individuals under RCW 71.05.365;

(d) Administer and provide for the availability of resource management services, residential services, and community support services as required under its contract with the authority;

(e) Contract with a sufficient number, as determined by the authority, of licensed or certified providers for

crisis services and other behavioral health services required by the authority;

(f) Maintain adequate reserves or secure a bond as required by its contract with the authority;

(g) Establish and maintain quality assurance processes;

(h) Meet established limitations on administrative costs for agencies that contract with the behavioral health administrative services organization; and

(i) Maintain patient tracking information as required by the authority.

(2) The behavioral health administrative services organization must collaborate with the authority and its contracted managed care organizations to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(3) The behavioral health administrative services organization shall:

(a) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met;

(b) Collaborate with local government entities to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities; and

(c) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

NEW SECTION. Sec. 18. A new section is added to chapter 71.24 RCW to read as follows:

The authority shall coordinate with the department of social and health services to offer contracts to community behavioral health agencies to support the nonmedicaid costs entailed in fulfilling the agencies' role as transition team members for a person recommended for conditional release to a less restrictive alternative under RCW 10.77.150, or for a person who qualifies for multidisciplinary transition team services under RCW 71.05.320(6)(a)(i). The authority may establish

requirements, provide technical assistance, and provide training as appropriate and within available funding.

NEW SECTION. Sec. 19. The Washington state health care authority shall revise its behavioral health data system for tracking involuntary commitment orders to distinguish less restrictive alternative orders from other types of involuntary commitment orders, including being able to distinguish between initial orders and extensions.

NEW SECTION. Sec. 20. The provisions of this act apply to persons who are committed for inpatient treatment under chapter 10.77 or 71.05 RCW as of the effective date of this section.

Sec. 21. 2020 c 302 s 110 (uncodified) is amended to read as follows:

(1) Sections 4 and 28 (~~of this act~~), chapter 302, Laws of 2020 and sections 13 and 14 of this act take effect when monthly single-bed certifications authorized under RCW 71.05.745 fall below 200 reports for 3 consecutive months.

(2) The health care authority must provide written notice of the effective date of sections 4 and 28 (~~of this act~~), chapter 302, Laws of 2020 and sections 13 and 14 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the authority.

NEW SECTION. Sec. 22. Section 2 of this act expires July 1, 2026.

NEW SECTION. Sec. 23. Section 3 of this act takes effect July 1, 2026.

NEW SECTION. Sec. 24. Sections 11 and 13 of this act expire July 1, 2022.

NEW SECTION. Sec. 25. Sections 12 and 14 of this act take effect July 1, 2022."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Johnson, J.; Lekanoff; Pollet; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers,

Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler; Hoff; Jacobsen and Rude.

MINORITY recommendation: Do not pass. Signed by Representatives Corry, Assistant Ranking Minority Member; Boehnke; Caldier and Dye.

Referred to Committee on Rules for second reading.

April 1, 2021

SSB 5073 Prime Sponsor, Committee on Behavioral Health Subcommittee to Health & Long Term Care: Concerning involuntary commitment. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 71.05.150 and 2020 c 302 s 13, 2020 c 256 s 302, and 2020 c 5 s 2 are each reenacted and amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient behavioral health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient treatment, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention under this section or a petition for involuntary outpatient behavioral health treatment under RCW 71.05.148. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, triage facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. As part of the assessment, the designated crisis responder must attempt to ascertain if the person has executed a mental health advance directive under

chapter 71.32 RCW. The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.

(2) (a) A ~~((written order of apprehension))~~ superior court judge may issue a warrant to detain a person with a behavioral health disorder to a designated evaluation and treatment facility, a secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program, for a period of not more than one hundred twenty hours for evaluation and treatment ~~((, may be issued by a judge of the superior court))~~ upon request of a designated crisis responder, subject to (d) of this subsection, whenever it appears to the satisfaction of ~~((a))~~ the judge ~~((of the superior court))~~ that:

(i) ~~((That there))~~ There is probable cause to support the petition; and

(ii) ~~((That the))~~ The person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(d) A court may not issue an order to detain a person to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program unless there is an available secure withdrawal management and stabilization facility or approved substance use disorder treatment program that has adequate space for the person.

(e) If the court does not issue an order to detain a person pursuant to this subsection (2), the court shall issue an order to dismiss the initial petition.

(3) The designated crisis responder shall then serve or cause to be served on

such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within one hundred twenty hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

(5) An Indian tribe shall have jurisdiction exclusive to the state as to any involuntary commitment of an American Indian or Alaska Native to an evaluation and treatment facility located within the boundaries of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, or the tribe has

expressly declined to exercise its exclusive jurisdiction.

(6) Tribal court orders for involuntary commitment shall be recognized and enforced in accordance with superior court civil rule 82.5.

(7) In any investigation and evaluation of an individual under RCW 71.05.150 or 71.05.153 in which the designated crisis responder knows, or has reason to know, that the individual is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state, the designated crisis responder shall notify the tribe or Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient treatment will be filed. Notification shall be made in person or by telephonic or electronic communication to the tribal contact listed in the authority's tribal crisis coordination plan as soon as possible but no later than three hours subject to the requirements in RCW 70.02.230 (2) ~~((dd))~~ (ee) and (3). A designated crisis responder may restrict the release of information as necessary to comply with 42 C.F.R. Part 2.

Sec. 2. RCW 71.05.150 and 2020 c 302 s 14, 2020 c 256 s 303, and 2020 c 5 s 3 are each reenacted and amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient behavioral health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient treatment, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention under this section or a petition for involuntary outpatient behavioral health treatment under RCW 71.05.148. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation

and treatment facility, crisis stabilization unit, triage facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. As part of the assessment, the designated crisis responder must attempt to ascertain if the person has executed a mental health advance directive under chapter 71.32 RCW. The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.

(2) (a) ~~A ((written order of apprehension))~~ superior court judge may issue a warrant to detain a person with a behavioral health disorder to a designated evaluation and treatment facility, a secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program, for a period of not more than one hundred twenty hours for evaluation and treatment ~~((, may be issued by a judge of the superior court))~~ upon request of a designated crisis responder whenever it appears to the satisfaction of ~~((a))~~ the judge ~~((of the superior court))~~ that:

(i) ~~((That there))~~ There is probable cause to support the petition; and

(ii) ~~((That the))~~ The person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(d) If the court does not issue an order to detain a person pursuant to this subsection (2), the court shall issue an order to dismiss the initial petition.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order

together with a notice of rights, and a petition for initial detention. After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within one hundred twenty hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

(5) An Indian tribe shall have jurisdiction exclusive to the state as to any involuntary commitment of an American Indian or Alaska Native to an evaluation and treatment facility located within the boundaries of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, or the tribe has expressly declined to exercise its exclusive jurisdiction.

(6) Tribal court orders for involuntary commitment shall be recognized and enforced in accordance with superior court civil rule 82.5.

(7) In any investigation and evaluation of an individual under RCW 71.05.150 or 71.05.153 in which the designated crisis responder knows, or has reason to know, that the individual is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state, the designated crisis responder shall notify the tribe or Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient treatment will be filed. Notification shall be made in person or by telephonic or electronic communication to the tribal contact listed in the authority's tribal crisis coordination plan as soon as possible but no later than three hours subject to the requirements in RCW 70.02.230 (2) ~~((ee))~~ (ee) and (3). A designated crisis responder may restrict the release of information as necessary to comply with 42 C.F.R. Part 2.

Sec. 3. RCW 71.05.153 and 2020 c 302 s 16 and 2020 c 5 s 4 are each reenacted and amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as the result of a behavioral health disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility, secure withdrawal management and stabilization facility if available with adequate space for the person, or approved substance use disorder treatment program if available with adequate space for the person, for not more than one hundred twenty hours as described in RCW 71.05.180.

(2)(a) Subject to (b) of this subsection, a peace officer may take or cause such person to be taken into custody and immediately delivered to a triage facility, crisis stabilization unit, evaluation and treatment facility, secure withdrawal management and

stabilization facility, approved substance use disorder treatment program, or the emergency department of a local hospital under the following circumstances:

(i) Pursuant to subsection (1) of this section; or

(ii) When he or she has reasonable cause to believe that such person is suffering from a behavioral health disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(b) A peace officer's delivery of a person, to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program is subject to the availability of a secure withdrawal management and stabilization facility or approved substance use disorder treatment program with adequate space for the person.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, triage facility that has elected to operate as an involuntary facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours, not counting time periods prior to medical clearance.

(4) Within three hours after arrival, not counting time periods prior to medical clearance, the person must be examined by a mental health professional or substance use disorder professional. Within twelve hours of notice of the need for evaluation, not counting time periods prior to medical clearance, the designated crisis responder must determine whether the individual meets detention criteria. As part of the assessment, the designated crisis responder must attempt to ascertain if the person has executed a mental health advance directive under chapter 71.32 RCW. The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview. If the individual is detained, the

designated crisis responder shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. If the individual is released to the community, the behavioral health service provider shall inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and provided contact information to the provider.

(5) Dismissal of a commitment petition is not the appropriate remedy for a violation of the timeliness requirements of this section based on the intent of this chapter under RCW 71.05.010 except in the few cases where the facility staff or designated crisis responder has totally disregarded the requirements of this section.

Sec. 4. RCW 71.05.153 and 2020 c 302 s 17 and 2020 c 5 s 5 are each reenacted and amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as the result of a behavioral health disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, for not more than one hundred twenty hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a triage facility, crisis stabilization unit, evaluation and treatment facility, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a behavioral health disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, triage facility that has elected to operate as an involuntary facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours, not counting time periods prior to medical clearance.

(4) Within three hours after arrival, not counting time periods prior to medical clearance, the person must be examined by a mental health professional or substance use disorder professional. Within twelve hours of notice of the need for evaluation, not counting time periods prior to medical clearance, the designated crisis responder must determine whether the individual meets detention criteria. As part of the assessment, the designated crisis responder must attempt to ascertain if the person has executed a mental health advance directive under chapter 71.32 RCW. The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview. If the individual is detained, the designated crisis responder shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. If the individual is released to the community, the behavioral health service provider shall inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and provided contact information to the provider.

(5) Dismissal of a commitment petition is not the appropriate remedy for a violation of the timeliness requirements of this section based on the intent of this chapter under RCW 71.05.010 except

in the few cases where the facility staff or designated crisis responder has totally disregarded the requirements of this section.

Sec. 5. RCW 71.05.210 and 2020 c 302 s 26 are each amended to read as follows:

(1) Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program:

(a) Shall, within twenty-four hours of his or her admission or acceptance at the facility, not counting time periods prior to medical clearance, be examined and evaluated by:

(i) One physician, physician assistant, or advanced registered nurse practitioner; and

(ii) One mental health professional. If the person is detained for substance use disorder evaluation and treatment, the person may be examined by a substance use disorder professional instead of a mental health professional; and

(b) Shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.590, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse: (i) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (ii) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to one hundred twenty hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for one hundred twenty hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

(2) If, ~~((after))~~ at any time during the involuntary treatment hold and following the initial examination and

evaluation, the mental health professional or substance use disorder professional and licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the initial needs of the person, if detained to an evaluation and treatment facility, would be better served by placement in a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, or, if detained to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, would be better served in an evaluation and treatment facility then the person shall be referred to the more appropriate placement for the remainder of the current commitment period without any need for further court review; however, a person may only be referred to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program if there is an available secure withdrawal management and stabilization facility or approved substance use disorder treatment program with adequate space for the person.

(3) An evaluation and treatment center, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated crisis responder and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

Sec. 6. RCW 71.05.210 and 2020 c 302 s 27 are each amended to read as follows:

(1) Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program:

(a) Shall, within twenty-four hours of his or her admission or acceptance at the facility, not counting time periods prior to medical clearance, be examined and evaluated by:

(i) One physician, physician assistant, or advanced registered nurse practitioner; and

(ii) One mental health professional. If the person is detained for substance use disorder evaluation and treatment, the person may be examined by a substance use disorder professional instead of a mental health professional; and

(b) Shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.590, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse: (i) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (ii) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to one hundred twenty hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for one hundred twenty hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

(2) If, ~~((after))~~ at any time during the involuntary treatment hold and following the initial examination and evaluation, the mental health professional or substance use disorder professional and licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the initial needs of the person, if detained to an evaluation and treatment facility, would be better served by placement in a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, or, if detained to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, would be better served in an evaluation and treatment facility then the person shall be referred to the more appropriate placement for the

remainder of the current commitment period without any need for further court review.

(3) An evaluation and treatment center, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated crisis responder and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

Sec. 7. RCW 71.05.240 and 2020 c 302 s 39 are each amended to read as follows:

(1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within one hundred twenty hours of the initial detention of such person as determined in RCW 71.05.180, or at a time determined under RCW 71.05.148.

(2) If the petition is for mental health treatment, the court or the prosecutor at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) If the person or his or her attorney alleges, prior to the commencement of the hearing, that the person has in good faith volunteered for treatment, the petitioner must show, by preponderance of the evidence, that the person has not in good faith volunteered for appropriate treatment. In order to qualify as a good faith volunteer, the person must abide by procedures and a treatment plan as prescribed by a treatment facility and professional staff.

(4)(a) Subject to (b) of this subsection, at the conclusion of the

probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a behavioral health disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility licensed or certified to provide treatment by the department or under RCW 71.05.745.

(b) A court may only order commitment to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program if there is an available facility with adequate space for the person.

(c) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.

(d) If the court finds by a preponderance of the evidence that such person, as the result of a behavioral health disorder, is in need of assisted outpatient behavioral health treatment, and that the person does not present a likelihood of serious harm and is not gravely disabled, the court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.

(5) An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the treatment recommendations of the behavioral health service provider.

(6) The court shall notify the person orally and in writing that if involuntary treatment is sought beyond the fourteen-day inpatient or ninety-day less restrictive treatment period, the person has the right to a full hearing or jury

trial under RCW 71.05.310. If the commitment is for mental health treatment, the court shall also notify the person orally and in writing that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

(7) If the court does not issue an order to detain a person under this section, the court shall issue an order to dismiss the petition.

(8) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

Sec. 8. RCW 71.05.240 and 2020 c 302 s 40 are each amended to read as follows:

(1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within one hundred twenty hours of the initial detention of such person as determined in RCW 71.05.180, or at a time determined under RCW 71.05.148.

(2) If the petition is for mental health treatment, the court or the prosecutor at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) If the person or his or her attorney alleges, prior to the commencement of the hearing, that the person has in good faith volunteered for treatment, the petitioner must show, by preponderance of the evidence, that the person has not in good faith volunteered for appropriate treatment. In order to qualify as a good faith volunteer, the person must abide by procedures and a treatment plan as prescribed by a treatment facility and professional staff.

(4)(a) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a

behavioral health disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility licensed or certified to provide treatment by the department or under RCW 71.05.745.

(b) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.

(c) If the court finds by a preponderance of the evidence that such person, as the result of a behavioral health disorder, is in need of assisted outpatient behavioral health treatment, and that the person does not present a likelihood of serious harm and is not gravely disabled, the court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.

(5) An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the treatment recommendations of the behavioral health service provider.

(6) The court shall notify the person orally and in writing that if involuntary treatment is sought beyond the fourteen-day inpatient or ninety-day less restrictive treatment period, such person has the right to a full hearing or jury trial under RCW 71.05.310. If the commitment is for mental health treatment, the court shall also notify the person orally and in writing that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

(7) If the court does not issue an order to detain a person under this section, the court shall issue an order to dismiss the petition.

(8) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

Sec. 9. RCW 71.05.320 and 2020 c 302 s 45 are each amended to read as follows:

(1)(a) Subject to (b) of this subsection, if the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. The court may only enter an order for commitment based on a substance use disorder if there is an available approved substance use disorder treatment program with adequate space for the person.

(c) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department or under RCW 71.05.745.

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

then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

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

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

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

(c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative

special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) (a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, subject to subsection (1)(b) of this section, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in

subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(b) At the end of the one hundred eighty-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

(9) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

Sec. 10. RCW 71.05.320 and 2020 c 302 s 46 are each amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of

intensive treatment not to exceed ninety days from the date of judgment.

If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for

involuntary treatment on the grounds that the committed person:

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

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

(c) (i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient behavioral health treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) (a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (7) of this section. If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(b) At the end of the one hundred eighty-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (7) of this section.

(9) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

Sec. 11. RCW 71.05.340 and 2018 c 201 s 3017 are each amended to read as follows:

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when ~~((added to the))~~ combined with the number of days the person has spent in inpatient treatment ((period)), shall not exceed ((the period of commitment)) 90 days if the underlying commitment was for a period of 14 or 90 days, or 180 days if the underlying commitment was for a period of 180 days. If the facility or agency designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the designated crisis responder in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(4)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the

criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The facility or agency designated to provide outpatient care or the secretary of the department of social and health services may modify the conditions for continued release when such modification is in the best interest of

the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions. Enforcement or revocation proceedings related to a conditional release (~~order~~) may occur as provided under RCW 71.05.590.

Sec. 12. RCW 71.05.585 and 2020 c 302 s 53 are each amended to read as follows:

(1) Less restrictive alternative treatment, at a minimum, includes the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the less restrictive alternative treatment;
- (c) A psychiatric evaluation, a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the (~~less restrictive alternative~~) treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan; (~~and~~)
- (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW; and
- (h) Notification to the care coordinator assigned in (a) of this subsection if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(2) Less restrictive alternative treatment may additionally include requirements to participate in the following services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance (~~abuse~~) use disorder counseling;
- (e) Residential treatment; (~~and~~)
- (f) Support for housing, benefits, education, and employment; and
- (g) Periodic court review.

(3) If the person was provided with involuntary medication under RCW 71.05.215 or pursuant to a judicial order

during the involuntary commitment period, the less restrictive alternative treatment order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(4) Less restrictive alternative treatment must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(5) The care coordinator assigned to a person ordered to less restrictive alternative treatment must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(6) A care coordinator may disclose information and records related to mental health services pursuant to RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment.

(7) For the purpose of this section, "care coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the designated crisis responders that are necessary for enforcement and continuation of less restrictive alternative orders and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

Sec. 13. RCW 71.05.590 and 2020 c 302 s 55 are each amended to read as follows:

(1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release (~~(order)~~), or a designated crisis responder, may take action to enforce, modify, or revoke a less restrictive alternative or conditional release (~~(order)~~). The agency, facility, or designated crisis responder must determine that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to or by the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is

necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated crisis responder, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, evaluation and treatment facility, secure withdrawal management and stabilization facility with available space, or an approved substance use disorder treatment program with available space. The person may be detained at the facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection ~~((4+))~~ (5) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection ~~((4+))~~ (5) of this section or, if the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, initiate initial inpatient detention procedures under subsection ~~((6+))~~ (7) of this section.

(3) A court may supervise a person on an order for less restrictive alternative treatment or a conditional release. While the person is under the order, the court may:

(a) Require appearance in court for periodic reviews; and

(b) Modify the order after considering input from the agency or facility designated to provide or facilitate services. The court may not remand the person into inpatient treatment except as

provided under subsection (5) of this section, but may take actions under subsection (2)(a) through (d) of this section.

(4) The facility or agency designated to provide outpatient treatment shall notify the secretary of the department of social and health services or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

~~((4))~~ (5)(a) Except as provided in subsection ~~((6))~~ (7) of this section, a designated crisis responder or the secretary of the department of social and health services may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this chapter to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility, an available secure withdrawal management and stabilization facility with adequate space, or an available approved substance use disorder treatment program with adequate space, in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection ~~((4))~~ (5) may be initiated without ordering the apprehension and detention of the person.

(b) Except as provided in subsection ~~((6))~~ (7) of this section, a person detained under this subsection ~~((4))~~ (5) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary of the department of social and health services may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated crisis responder or secretary of the department of social and health services shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated crisis responder shall serve the person and their attorney, guardian, and

conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) Except as provided in subsection ~~((6))~~ (7) of this section, the issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release ~~((order))~~ or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period must be for fourteen days from the revocation hearing if the outpatient order was based on a petition under RCW 71.05.160 or 71.05.230. If the court orders detention for inpatient treatment and the outpatient order was based on a petition under RCW 71.05.290 or 71.05.320, the number of days remaining on the outpatient order must be converted to days of inpatient treatment authorized in the original court order. A court may not issue an order to detain a person for inpatient treatment in a secure withdrawal management and stabilization facility or approved substance use disorder treatment program under this subsection unless there is a secure withdrawal management and stabilization facility or approved substance use disorder treatment program available and with adequate space for the person.

~~((5))~~ (6) In determining whether or not to take action under this section the designated crisis responder, agency, or

facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

((46)) (7)(a) If the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, a designated crisis responder may initiate inpatient detention procedures under RCW 71.05.150 or 71.05.153 when appropriate. A designated crisis responder or the secretary may, upon their own motion or notification by the facility or agency designated to provide outpatient care to a person subject to a less restrictive alternative treatment order under RCW 71.05.320 subsequent to an order for assisted outpatient behavioral health treatment entered under RCW 71.05.148, order the person to be apprehended and taken into custody and temporary detention for inpatient evaluation in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program, in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection may be initiated without ordering the apprehension and detention of the person.

(b) A person detained under this subsection may be held for evaluation for up to one hundred twenty hours, excluding weekends and holidays, pending a court hearing. If the person is not detained, the hearing must be scheduled within one hundred twenty hours of service on the person. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The issues for the court to determine are whether to continue the detention of the person for inpatient treatment or whether the court should reinstate or modify the person's less restrictive alternative order or order the person's detention for inpatient treatment. To continue detention after the one hundred twenty hour period, the court must find that the person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and, after

considering less restrictive alternatives to involuntary detention and treatment, that no such alternatives are in the best interest of the person or others.

(d) A court may not issue an order to detain a person for inpatient treatment in a secure withdrawal management and stabilization facility or approved substance use disorder program under this subsection unless there is a secure withdrawal management and stabilization facility or approved substance use disorder treatment program available and with adequate space for the person.

Sec. 14. RCW 71.05.590 and 2020 c 302 s 56 are each amended to read as follows:

(1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release (~~order~~), or a designated crisis responder, may take action to enforce, modify, or revoke a less restrictive alternative or conditional release (~~order~~). The agency, facility, or designated crisis responder must determine that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of

contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to or by the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated crisis responder, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, evaluation and treatment facility, secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program. The person may be detained at the facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection ~~((4))~~ (5) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection ~~((4))~~ (5) of this section or, if the current commitment is solely based on the person being in need of assisted outpatient behavioral health

treatment as defined in RCW 71.05.020, initial inpatient detention procedures under subsection ~~((6))~~ (7) of this section.

(3) A court may supervise a person on an order for less restrictive alternative treatment or a conditional release. While the person is under the order, the court may:

(a) Require appearance in court for periodic reviews; and

(b) Modify the order after considering input from the agency or facility designated to provide or facilitate services. The court may not remand the person into inpatient treatment except as provided under subsection (5) of this section, but may take actions under subsection (2)(a) through (d) of this section.

(4) The facility or agency designated to provide outpatient treatment shall notify the secretary of the department of social and health services or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

~~((4))~~ (5)(a) Except as provided in subsection ~~((6))~~ (7) of this section, a designated crisis responder or the secretary of the department of social and health services may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this chapter to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility, in a secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program, in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection ~~((4))~~ (5) may be initiated without ordering the apprehension and detention of the person.

(b) Except as provided in subsection ~~((6))~~ (7) of this section, a person detained under this subsection ~~((4))~~ (5) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five

days of service on the person. The designated crisis responder or the secretary of the department of social and health services may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated crisis responder or secretary of the department of social and health services shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated crisis responder shall serve the person and their attorney, guardian, and conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) Except as provided in subsection ~~((46))~~ (7) of this section, the issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release ~~((order))~~ or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period must be for fourteen days from the revocation hearing if the outpatient order was based on a petition under RCW 71.05.160 or 71.05.230. If the court orders detention for inpatient treatment and the outpatient order was based on a petition under RCW 71.05.290 or 71.05.320, the number of days remaining on the outpatient order must be

converted to days of inpatient treatment authorized in the original court order.

~~((45))~~ (6) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

~~((46))~~ (7)(a) If the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, a designated crisis responder may initiate inpatient detention procedures under RCW 71.05.150 or 71.05.153 when appropriate. A designated crisis responder or the secretary may, upon their own motion or notification by the facility or agency designated to provide outpatient care to a person subject to a less restrictive alternative treatment order under RCW 71.05.320 subsequent to an order for assisted outpatient behavioral health treatment entered under RCW 71.05.148, order the person to be apprehended and taken into custody and temporary detention for inpatient evaluation in an evaluation and treatment facility, in a secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program, in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection may be initiated without ordering the apprehension and detention of the person.

(b) A person detained under this subsection may be held for evaluation for up to one hundred twenty hours, excluding weekends and holidays, pending a court hearing. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The issues for the court to determine are whether to continue the detention of the person for inpatient treatment or whether the court should reinstate or modify the person's less restrictive alternative order or order the person's detention for inpatient treatment. To continue detention after the one hundred twenty hour period, the court must find that the person, as a result of a behavioral health disorder,

presents a likelihood of serious harm or is gravely disabled and, after considering less restrictive alternatives to involuntary detention and treatment, that no such alternatives are in the best interest of the person or others.

Sec. 15. RCW 71.34.755 and 2020 c 302 s 96 are each amended to read as follows:

(1) Less restrictive alternative treatment, at a minimum, must include the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the less restrictive alternative treatment;
- (c) A psychiatric evaluation, a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan; and
- (g) Notification to the care coordinator assigned in (a) of this subsection if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(2) Less restrictive alternative treatment may include the following additional services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance ~~((abuse))~~ use disorder counseling;
- (e) Residential treatment; ~~((and))~~
- (f) Support for housing, benefits, education, and employment; and
- (g) Periodic court review.

(3) If the minor was provided with involuntary medication during the involuntary commitment period, the less restrictive alternative treatment order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary

antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(4) Less restrictive alternative treatment must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(5) The care coordinator assigned to a minor ordered to less restrictive alternative treatment must submit an individualized plan for the minor's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(6) A care coordinator may disclose information and records related to mental health services pursuant to RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment.

(7) For the purpose of this section, "care coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the designated crisis responders that are necessary for enforcement and continuation of less restrictive alternative treatment orders and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

Sec. 16. RCW 70.02.230 and 2020 c 256 s 402 are each amended to read as follows:

(1) ~~((Except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under~~

~~RCW 70.02.030, the~~) The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies (~~must be confidential~~) may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or under a valid authorization under RCW 70.02.030.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed (~~only~~):

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, including Indian health care providers, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;
- (iv) Who is providing services under chapter 71.24 RCW;
- (v) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

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

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d) (i) To the courts, including tribal courts, as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e) (i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the

federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

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

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) By a care coordinator under RCW 71.05.585 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 RCW;

(l) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

~~((l))~~ (m) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

~~((m))~~ (n) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iv);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

~~((+))~~ (o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

~~((+))~~ (p) Pursuant to lawful order of a court, including a tribal court;

~~((+))~~ (q) To qualified staff members of the department, to the authority, to behavioral health administrative services organizations, to managed care organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

~~((+))~~ (r) Within the mental health service agency or Indian health care provider facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

~~((+))~~ (s) Within the department and the authority as necessary to coordinate treatment for mental illness, developmental disabilities, ~~((alcoholism,))~~ or substance use disorder of persons who are under the supervision of the department;

~~((+))~~ (t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, ~~((alcoholism, or drug abuse))~~ or substance use disorder of persons who are under the supervision of the department of social and health

services or the department of children, youth, and families;

~~((+))~~ (u) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

~~((+))~~ (v)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider, including an Indian health care provider, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility, health care provider, or Indian health care provider, or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2) ~~((+))~~ (v) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

~~((+))~~ (w) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in ~~((+))~~ (v) of this subsection;

~~((+))~~ (x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and

a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

~~((+x))~~ (y) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

~~((+y))~~ (z) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

~~((+z))~~ (aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection

information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

~~((+aa))~~ (bb) (i) To the secretary of social and health services and the director of the health care authority for either program evaluation or research, or both so long as the secretary or director, where applicable, adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

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

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

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary, or director, where applicable;

~~((+bb))~~ (cc) To any person if the conditions in RCW 70.02.205 are met;

~~((+cc))~~ (dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450; or

~~((+dd))~~ (ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(7).

(3) Whenever federal law or federal regulations restrict the release of

information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW 71.05.280(3) and 71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

- (i) One thousand dollars; or
- (ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170.

Sec. 17. RCW 70.02.240 and 2019 c 381 s 20 are each amended to read as follows:

The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265. Confidential information under this section may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) By a care coordinator under RCW 71.34.755 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 RCW;

(6) To law enforcement officers or public health officers as necessary to

carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

~~((6))~~ (7) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

~~((7))~~ (8) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

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

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

/s/";

~~((8))~~ (9) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

~~((9))~~ (10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

~~((10))~~ (11) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

~~((11))~~ (12) Upon the death of a minor, to the minor's next of kin;

~~((12))~~ (13) To a facility in which the minor resides or will reside;

~~((13))~~ (14) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iv). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iv);

(c) Disclosure under this subsection is mandatory for the purposes of the

federal health insurance portability and accountability act;

~~((14))~~ (15) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

~~((15))~~ (16) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

~~((16))~~ (17) Pursuant to a lawful order of a court.

Sec. 18. RCW 71.05.425 and 2018 c 201 s 3019 are each amended to read as follows:

(1) (a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside;

(ii) The sheriff of the county in which the person will reside; and

(iii) The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3)

or 71.05.320(4)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(4)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings;

(iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(4) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties

pursuant to RCW 70.02.230(2)((~~n~~)) (o). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department of social and health services learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department of social and health services by the requesting party. The requesting party shall furnish the department of social and health services with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

Sec. 19. RCW 71.05.020 and 2020 c 302 s 3, 2020 c 256 s 301, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to (~~hospitals~~): Hospitals licensed under chapter 70.41 RCW((~~r~~)); evaluation and treatment facilities as defined in this section((~~r~~)); community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025((~~r~~)); licensed or certified behavioral health agencies under RCW 71.24.037; facilities conducting competency evaluations and restoration under chapter 10.77 RCW((~~r~~)); approved substance use disorder treatment programs as defined in this section((~~r~~)); secure withdrawal management and stabilization facilities as defined in this section((~~r~~)); and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

being assisted as manifested by prior charged criminal conduct;

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585. This term includes: Treatment pursuant to a less restrictive alternative treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant to a conditional release under RCW 71.05.340; and treatment pursuant to an assisted outpatient behavioral health treatment order under RCW 71.05.148;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of

sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such

others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(52) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(53) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(54) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(55) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of

social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(57) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(58) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property(†

~~(59) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered~~

~~into the Washington crime information center database).~~

Sec. 20. RCW 71.05.020 and 2020 c 302 s 3, 2020 c 256 s 301, 2020 c 80 s 51, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but

is not limited to(~~(, hospitals))~~); Hospitals licensed under chapter 70.41 RCW((~~7~~)); evaluation and treatment facilities as defined in this section((~~7~~)); community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025((~~7~~)); licensed or certified behavioral health agencies under RCW 71.24.037; facilities conducting competency evaluations and restoration under chapter 10.77 RCW((~~7~~)); approved substance use disorder treatment programs as defined in this section((~~7~~)); secure withdrawal management and stabilization facilities as defined in this section((~~7~~)); and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a

federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020 (5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional

institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment

to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less

restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585. This term includes: Treatment pursuant to a less restrictive alternative treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant to a conditional release under RCW 71.05.340; and treatment pursuant to an assisted outpatient behavioral health treatment order under RCW 71.05.148;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency

or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral

health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(52) "Substance use disorder" means a cluster of cognitive, behavioral, and

physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(53) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(54) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(55) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(56) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(57) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(58) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property(+

~~(59) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database).~~

Sec. 21. RCW 71.05.020 and 2020 c 302 s 4, 2020 c 302 s 3, 2020 c 256 s 301, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to ~~((hospitals))~~; Hospitals licensed under chapter 70.41 RCW((τ)); evaluation and treatment facilities as defined in this section((τ)); community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025((τ)); licensed or certified behavioral health agencies under RCW 71.24.037; facilities conducting competency evaluations and restoration under chapter 10.77 RCW((τ)); approved substance use disorder treatment programs as defined in this section((τ)); secure withdrawal management and stabilization facilities as defined in this section((τ)); and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for

proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585. This term includes: Treatment pursuant to a less restrictive alternative treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant to a conditional release under RCW 71.05.340; and treatment pursuant to an assisted outpatient behavioral health treatment order under RCW 71.05.148;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused

substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder

professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior;

(52) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(53) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(56) "Treatment records" include registration and all other records

concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(58) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(59) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property(+

~~(60) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in~~

~~the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database)).~~

Sec. 22. RCW 71.05.020 and 2020 c 302 s 4, 2020 c 302 s 3, 2020 c 256 s 301, 2020 c 80 s 51, and 2020 c 5 s 1 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

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

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

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

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

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder services to persons with

behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to (~~(hospitals)~~): Hospitals licensed under chapter 70.41 RCW((τ)); evaluation and treatment facilities as defined in this section((τ)); community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025((τ)); licensed or certified behavioral health agencies under RCW 71.24.037; facilities conducting competency evaluations and restoration under chapter 10.77 RCW((τ)); approved substance use disorder treatment programs as defined in this section((τ)); secure withdrawal management and stabilization facilities as defined in this section((τ)); and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(12) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(14) "Department" means the department of health;

(15) "Designated crisis responder" means a mental health professional

appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(16) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(17) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(18) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(19) "Director" means the director of the authority;

(20) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

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

(22) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department

of social and health services or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

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

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

(25) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

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

(27) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(28) "In need of assisted outpatient behavioral health treatment" means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty-six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to

benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time;

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

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

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

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

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

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

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

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

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

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

(32) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(33) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585. This term includes: Treatment pursuant to a less restrictive alternative treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant to a conditional release under RCW 71.05.340; and treatment pursuant to an assisted outpatient behavioral health treatment order under RCW 71.05.148;

(34) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(35) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(36) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

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

(38) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(39) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(40) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW;

(41) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(43) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department

or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(47) "Release" means legal termination of the commitment under the provisions of this chapter;

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

(49) "Secretary" means the secretary of the department of health, or his or her designee;

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(51) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is

associated with significant impairment of judgment, reason, or behavior;

(52) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(53) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(56) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(58) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(59) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property(†

~~(60) "Written order of apprehension" means an order of the court for a peace officer to deliver the named person in the order to a facility or emergency room as determined by the designated crisis responder. Such orders shall be entered into the Washington crime information center database).~~

Sec. 23. 2020 c 302 s 110 (uncodified) is amended to read as follows:

(1) Sections 4 and 28 (~~of this act~~), chapter 302, Laws of 2020 and, until July 1, 2022, section 21 of this act and, beginning July 1, 2022, section 22 of this act take effect when monthly single-bed certifications authorized under RCW 71.05.745 fall below 200 reports for 3 consecutive months.

(2) The health care authority must provide written notice of the effective date of sections 4 and 28 (~~of this act~~), chapter 302, Laws of 2020 and sections 21 and 22 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the authority.

Sec. 24. RCW 71.34.020 and 2020 c 302 s 63, 2020 c 274 s 50, and 2020 c 185 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) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a minor should be examined or treated as a patient in a hospital.

(2) "Adolescent" means a minor thirteen years of age or older.

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

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

(5) "Approved substance use disorder treatment program" means a program for minors with substance use disorders provided by a treatment program licensed or certified by the department of health as meeting standards adopted under chapter 71.24 RCW.

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

(7) "Authority" means the Washington state health care authority.

(8) "Behavioral health administrative services organization" has the same meaning as provided in RCW 71.24.025.

(9) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder.

(10) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in

a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(11) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(12) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(13) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms.

(14) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105.

(15) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, such as a residential treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization.

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

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

(18) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(19) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter.

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

(21) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(22) "Director" means the director of the authority.

(23) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(24) "Evaluation and treatment facility" means a public or private facility or unit that is licensed or certified by the department of health to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the state or federal agency does not require licensure or certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(25) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(26) "Gravely disabled minor" means a minor who, as a result of a behavioral health disorder, (a) is in danger of serious physical harm resulting from a

failure to provide for his or her essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(27) "Habilitative services" means those services provided by program personnel to assist minors in acquiring and maintaining life skills and in raising their levels of physical, behavioral, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(28) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.34.910.

(29) "History of one or more violent acts" refers to the period of time five years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term ~~((alcoholism or drug))~~ substance use disorder treatment facility, or in confinement as a result of a criminal conviction.

(30) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which states:

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

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

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

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

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

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual

discharge or release, and a projected possible date for discharge or release; and

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

(31)(a) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility licensed or certified by the department of health as an evaluation and treatment facility for minors, secure withdrawal management and stabilization facility for minors, or approved substance use disorder treatment program for minors.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "inpatient treatment" has the meaning included in (a) of this subsection and any other residential treatment facility licensed under chapter 71.12 RCW.

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

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

(34) "Kinship caregiver" has the same meaning as in RCW 74.13.031(19)(a).

(35) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130.

(36) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor ~~((who is not residing in a facility providing inpatient treatment as defined in this chapter))~~ as a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.34.755, including residential treatment.

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

(38) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a minor upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a minor upon another individual, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a minor upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(39) "Managed care organization" has the same meaning as provided in RCW 71.24.025.

(40) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder.

(41) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or (b) prevent the progression of a mental disorder or substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to cause or aggravate a disability, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(42) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(43) "Mental health professional" means a psychiatrist, psychiatric advanced registered nurse practitioner, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, social worker, and such other mental health professionals as

defined by rules adopted by the secretary of the department of health under this chapter.

(44) "Minor" means any person under the age of eighteen years.

(45) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed or certified behavioral health agencies as identified by RCW 71.24.025.

(46) (a) "Parent" has the same meaning as defined in RCW 26.26A.010, including either parent if custody is shared under a joint custody agreement, or a person or agency judicially appointed as legal guardian or custodian of the child.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "parent" also includes a person to whom a parent defined in (a) of this subsection has given a signed authorization to make health care decisions for the adolescent, a stepparent who is involved in caring for the adolescent, a kinship caregiver who is involved in caring for the adolescent, or another relative who is responsible for the health care of the adolescent, who may be required to provide a declaration under penalty of perjury stating that he or she is a relative responsible for the health care of the adolescent pursuant to chapter 5.50 RCW. If a dispute arises between individuals authorized to act as a parent for the purpose of RCW 71.34.600 through 71.34.670, the disagreement must be resolved according to the priority established under RCW 7.70.065(2)(a).

(47) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(48) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW.

(49) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and

treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders.

(50) "Professional person in charge" or "professional person" means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility.

(51) "Psychiatric nurse" means a registered nurse who has experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional.

(52) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(53) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(54) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved substance use disorder treatment program that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(55) "Release" means legal termination of the commitment under the provisions of this chapter.

(56) "Resource management services" has the meaning given in chapter 71.24 RCW.

(57) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(58) "Secretary" means the secretary of the department or secretary's designee.

(59) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health.

(60) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(61) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

(62) "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the

designated crisis responder which results in medical diagnosis, consultation, or treatment.

(63) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

~~((63))~~ (64) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW.

~~((64))~~ (65) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties.

~~((65))~~ (66) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, the department of health, the authority, behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, the department of health, the authority, behavioral health organizations, or a treatment facility if the notes or records are not available to others.

~~((66))~~ (67) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be

structured as a voluntary or involuntary placement facility.

~~((67))~~ (68) "Video" means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology.

(69) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property.

~~((68) "Written order of apprehension" means an order of the court for a peace officer to deliver the named minor in the order to a facility or emergency room as determined by the designated crisis responder. Such orders must be entered into the Washington crime information center database.)~~

Sec. 25. RCW 71.34.020 and 2020 c 302 s 63, 2020 c 274 s 50, 2020 c 185 s 2, and 2020 c 80 s 54 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) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a minor should be examined or treated as a patient in a hospital.

(2) "Adolescent" means a minor thirteen years of age or older.

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

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

(5) "Approved substance use disorder treatment program" means a program for

minors with substance use disorders provided by a treatment program licensed or certified by the department of health as meeting standards adopted under chapter 71.24 RCW.

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

(7) "Authority" means the Washington state health care authority.

(8) "Behavioral health administrative services organization" has the same meaning as provided in RCW 71.24.025.

(9) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder.

(10) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(11) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(12) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(13) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms.

(14) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205

RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105.

(15) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, such as a residential treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization.

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

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

(18) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(19) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter.

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

(21) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(22) "Director" means the director of the authority.

(23) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(24) "Evaluation and treatment facility" means a public or private facility or unit that is licensed or certified by the department of health to provide emergency, inpatient, residential, or outpatient mental health

evaluation and treatment services for minors. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the state or federal agency does not require licensure or certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(25) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

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

(27) "Habilitative services" means those services provided by program personnel to assist minors in acquiring and maintaining life skills and in raising their levels of physical, behavioral, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(28) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.34.910.

(29) "History of one or more violent acts" refers to the period of time five years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term (~~alcoholism or drug~~) substance use disorder treatment facility, or in confinement as a result of a criminal conviction.

(30) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which states:

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

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

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

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

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

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

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

(31)(a) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility licensed or certified by the department of health as an evaluation and treatment facility for minors, secure withdrawal management and stabilization facility for minors, or approved substance use disorder treatment program for minors.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "inpatient treatment" has the meaning included in (a) of this subsection and any other residential treatment facility licensed under chapter 71.12 RCW.

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

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

(34) "Kinship caregiver" has the same meaning as in RCW 74.13.031(19)(a).

(35) "Legal counsel" means attorneys and staff employed by county prosecutor

offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130.

(36) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor (~~who is not residing in a facility providing inpatient treatment as defined in this chapter~~) as a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.34.755, including residential treatment.

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

(38) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a minor upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a minor upon another individual, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a minor upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(39) "Managed care organization" has the same meaning as provided in RCW 71.24.025.

(40) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder.

(41) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or (b) prevent the progression of a mental disorder or substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity

or threatens to cause or aggravate a disability, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(42) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(43) "Mental health professional" means a psychiatrist, psychiatric advanced registered nurse practitioner, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, social worker, and such other mental health professionals as defined by rules adopted by the secretary of the department of health under this chapter.

(44) "Minor" means any person under the age of eighteen years.

(45) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed or certified behavioral health agencies as identified by RCW 71.24.025.

(46)(a) "Parent" has the same meaning as defined in RCW 26.26A.010, including either parent if custody is shared under a joint custody agreement, or a person or agency judicially appointed as legal guardian or custodian of the child.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "parent" also includes a person to whom a parent defined in (a) of this subsection has given a signed authorization to make health care decisions for the adolescent, a stepparent who is involved in caring for the adolescent, a kinship caregiver who is involved in caring for the adolescent, or another relative who is responsible for the health care of the adolescent, who may be required to provide a declaration under penalty of perjury stating that he or she is a relative responsible for the health care of the adolescent pursuant to chapter 5.50 RCW. If a dispute arises between individuals authorized to act as a parent for the purpose of RCW 71.34.600 through 71.34.670, the disagreement must be resolved according to the priority established under RCW 7.70.065(2)(a).

(47) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(48) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW.

(49) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders.

(50) "Professional person in charge" or "professional person" means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility.

(51) "Psychiatric nurse" means a registered nurse who has experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional.

(52) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(53) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(54) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved substance use disorder treatment program that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons

with mental illness, substance use disorders, or both mental illness and substance use disorders if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(55) "Release" means legal termination of the commitment under the provisions of this chapter.

(56) "Resource management services" has the meaning given in chapter 71.24 RCW.

(57) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(58) "Secretary" means the secretary of the department or secretary's designee.

(59) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health.

(60) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(61) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

(62) "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment.

(63) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

~~((63))~~ (64) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW.

~~((64))~~ (65) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties.

~~((65))~~ (66) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, the department of health, the authority, behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a

medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, the department of health, the authority, behavioral health organizations, or a treatment facility if the notes or records are not available to others.

~~((66))~~ (67) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility.

~~((67))~~ (68) "Video" means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology.

(69) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property.

~~((68) "Written order of apprehension" means an order of the court for a peace officer to deliver the named minor in the order to a facility or emergency room as determined by the designated crisis responder. Such orders must be entered into the Washington crime information center database.))~~

Sec. 26. RCW 71.34.020 and 2020 c 302 s 64, 2020 c 302 s 63, 2020 c 274 s 50, and 2020 c 185 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) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a minor should be examined or treated as a patient in a hospital.

(2) "Adolescent" means a minor thirteen years of age or older.

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

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

(5) "Approved substance use disorder treatment program" means a program for minors with substance use disorders provided by a treatment program licensed or certified by the department of health as meeting standards adopted under chapter 71.24 RCW.

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

(7) "Authority" means the Washington state health care authority.

(8) "Behavioral health administrative services organization" has the same meaning as provided in RCW 71.24.025.

(9) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder.

(10) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(11) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(12) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(13) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms.

(14) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105.

(15) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, such as a residential treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization.

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

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

(18) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(19) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter.

(20) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such

other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department.

(21) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(22) "Director" means the director of the authority.

(23) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(24) "Evaluation and treatment facility" means a public or private facility or unit that is licensed or certified by the department of health to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the state or federal agency does not require licensure or certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(25) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(26) "Gravely disabled minor" means a minor who, as a result of a behavioral health disorder, (a) is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or (b) manifests severe deterioration from safe behavior evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(27) "Habilitative services" means those services provided by program personnel to assist minors in acquiring and maintaining life skills and in raising their levels of physical, behavioral, social, and vocational functioning. Habilitative services

include education, training for employment, and therapy.

(28) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.34.910.

(29) "History of one or more violent acts" refers to the period of time five years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term (~~alcoholism or drug~~) substance use disorder treatment facility, or in confinement as a result of a criminal conviction.

(30) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which states:

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

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

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

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

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

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

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

(31)(a) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility licensed or certified by the department of health as an evaluation and treatment facility for minors, secure withdrawal management and stabilization facility for minors, or

approved substance use disorder treatment program for minors.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "inpatient treatment" has the meaning included in (a) of this subsection and any other residential treatment facility licensed under chapter 71.12 RCW.

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

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

(34) "Kinship caregiver" has the same meaning as in RCW 74.13.031(19)(a).

(35) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130.

(36) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor (~~who is not residing in a facility providing inpatient treatment as defined in this chapter~~) as a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.34.755, including residential treatment.

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

(38) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a minor upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a minor upon another individual, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a minor upon the property of others, as evidenced by behavior which

has caused substantial loss or damage to the property of others; or

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

(39) "Managed care organization" has the same meaning as provided in RCW 71.24.025.

(40) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder.

(41) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or (b) prevent the progression of a mental disorder or substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to cause or aggravate a disability, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(42) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(43) "Mental health professional" means a psychiatrist, psychiatric advanced registered nurse practitioner, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, social worker, and such other mental health professionals as defined by rules adopted by the secretary of the department of health under this chapter.

(44) "Minor" means any person under the age of eighteen years.

(45) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed or certified behavioral health agencies as identified by RCW 71.24.025.

(46)(a) "Parent" has the same meaning as defined in RCW 26.26A.010, including either parent if custody is shared under a joint custody agreement, or a person or

agency judicially appointed as legal guardian or custodian of the child.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "parent" also includes a person to whom a parent defined in (a) of this subsection has given a signed authorization to make health care decisions for the adolescent, a stepparent who is involved in caring for the adolescent, a kinship caregiver who is involved in caring for the adolescent, or another relative who is responsible for the health care of the adolescent, who may be required to provide a declaration under penalty of perjury stating that he or she is a relative responsible for the health care of the adolescent pursuant to chapter 5.50 RCW. If a dispute arises between individuals authorized to act as a parent for the purpose of RCW 71.34.600 through 71.34.670, the disagreement must be resolved according to the priority established under RCW 7.70.065(2)(a).

(47) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(48) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW.

(49) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders.

(50) "Professional person in charge" or "professional person" means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility.

(51) "Psychiatric nurse" means a registered nurse who has experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional.

(52) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(53) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(54) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved substance use disorder treatment program that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(55) "Release" means legal termination of the commitment under the provisions of this chapter.

(56) "Resource management services" has the meaning given in chapter 71.24 RCW.

(57) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(58) "Secretary" means the secretary of the department or secretary's designee.

(59) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health.

(60) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior.

(61) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(62) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

(63) "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment.

(64) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the

substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

~~((64))~~ (65) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW.

~~((65))~~ (66) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties.

~~((66))~~ (67) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, the department of health, the authority, behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, the department of health, the authority, behavioral health organizations, or a treatment facility if the notes or records are not available to others.

~~((67))~~ (68) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility.

~~((68))~~ (69) "Video" means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a

designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology.

(70) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property.

~~((69) "Written order of apprehension" means an order of the court for a peace officer to deliver the named minor in the order to a facility or emergency room as determined by the designated crisis responder. Such orders must be entered into the Washington crime information center database-))~~

Sec. 27. RCW 71.34.020 and 2020 c 302 s 64, 2020 c 302 s 63, 2020 c 274 s 50, 2020 c 185 s 2, and 2020 c 80 s 54 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) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a minor should be examined or treated as a patient in a hospital.

(2) "Adolescent" means a minor thirteen years of age or older.

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

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

(5) "Approved substance use disorder treatment program" means a program for minors with substance use disorders provided by a treatment program licensed or certified by the department of health as meeting standards adopted under chapter 71.24 RCW.

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

(7) "Authority" means the Washington state health care authority.

(8) "Behavioral health administrative services organization" has the same meaning as provided in RCW 71.24.025.

(9) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder.

(10) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(11) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(12) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(13) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms.

(14) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105.

(15) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, such as a residential treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization.

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

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

(18) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(19) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter.

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

(21) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(22) "Director" means the director of the authority.

(23) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(24) "Evaluation and treatment facility" means a public or private facility or unit that is licensed or certified by the department of health to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility for

minors. A facility which is part of or operated by the state or federal agency does not require licensure or certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(25) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(26) "Gravely disabled minor" means a minor who, as a result of a behavioral health disorder, (a) is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or (b) manifests severe deterioration from safe behavior evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(27) "Habilitative services" means those services provided by program personnel to assist minors in acquiring and maintaining life skills and in raising their levels of physical, behavioral, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(28) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.34.910.

(29) "History of one or more violent acts" refers to the period of time five years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term ~~((alcoholism or drug))~~ substance use disorder treatment facility, or in confinement as a result of a criminal conviction.

(30) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which states:

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

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

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

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

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

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

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

(31)(a) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility licensed or certified by the department of health as an evaluation and treatment facility for minors, secure withdrawal management and stabilization facility for minors, or approved substance use disorder treatment program for minors.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "inpatient treatment" has the meaning included in (a) of this subsection and any other residential treatment facility licensed under chapter 71.12 RCW.

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

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

(34) "Kinship caregiver" has the same meaning as in RCW 74.13.031(19)(a).

(35) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130.

(36) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor (~~(who is not residing in a facility providing inpatient treatment as defined in this chapter)~~) as a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.34.755, including residential treatment.

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

(38) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a minor upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a minor upon another individual, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a minor upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

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

(39) "Managed care organization" has the same meaning as provided in RCW 71.24.025.

(40) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder.

(41) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or (b) prevent the progression of a mental disorder or substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to cause or aggravate a disability, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(42) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(43) "Mental health professional" means a psychiatrist, psychiatric advanced registered nurse practitioner, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, social worker, and such other mental health professionals as defined by rules adopted by the secretary of the department of health under this chapter.

(44) "Minor" means any person under the age of eighteen years.

(45) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed or certified behavioral health agencies as identified by RCW 71.24.025.

(46) (a) "Parent" has the same meaning as defined in RCW 26.26A.010, including either parent if custody is shared under a joint custody agreement, or a person or agency judicially appointed as legal guardian or custodian of the child.

(b) For purposes of family-initiated treatment under RCW 71.34.600 through 71.34.670, "parent" also includes a person to whom a parent defined in (a) of this subsection has given a signed authorization to make health care decisions for the adolescent, a stepparent who is involved in caring for the adolescent, a kinship caregiver who is involved in caring for the adolescent, or another relative who is responsible for the health care of the adolescent, who may be required to provide a declaration under penalty of perjury stating that he or she is a relative responsible for the health care of the adolescent pursuant to chapter 5.50 RCW. If a dispute arises between individuals authorized to act as a parent for the purpose of RCW 71.34.600 through 71.34.670, the disagreement must be resolved according to the priority established under RCW 7.70.065(2) (a).

(47) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer

powers by any state law, local ordinance, or judicial order of appointment.

(48) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW.

(49) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders.

(50) "Professional person in charge" or "professional person" means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility.

(51) "Psychiatric nurse" means a registered nurse who has experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional.

(52) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(53) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(54) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved substance use disorder treatment program that is conducted for, or includes a distinct unit, floor, or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders if the agency is operated directly by federal, state,

county, or municipal government, or a combination of such governments.

(55) "Release" means legal termination of the commitment under the provisions of this chapter.

(56) "Resource management services" has the meaning given in chapter 71.24 RCW.

(57) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(58) "Secretary" means the secretary of the department or secretary's designee.

(59) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health.

(60) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is

associated with significant impairment of judgment, reason, or behavior.

(61) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

~~((61))~~ (62) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

~~((62))~~ (63) "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment.

(64) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

~~((63))~~ (65) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW.

~~((64) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior.~~

~~(65))~~ (66) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties.

~~((66))~~ (67) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, the department of health, the authority, behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, the department of health, the authority, behavioral health organizations, or a treatment facility if the notes or records are not available to others.

~~((67))~~ (68) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department of health under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility.

~~((68))~~ (69) "Video" means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology.

(70) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property.

~~((69) "Written order of apprehension" means an order of the court for a peace officer to deliver the named minor in the order to a facility or emergency room as determined by the designated crisis responder. Such orders must be entered into the Washington crime information center database-))~~

Sec. 28. 2020 c 302 s 111 (uncodified) is amended to read as follows:

(1) Sections 64 and 81 ~~((of this act))~~, chapter 302, Laws of 2020 and, until July 1, 2022, section 26 of this act and, beginning July 1, 2022, section 27 of this act take effect when the average wait time for children's long-term inpatient placement admission is 30 days or less for two consecutive quarters.

(2) The health care authority must provide written notice of the effective date of sections 64 and 81 ~~((of this act))~~, chapter 302, Laws of 2020 and sections 26 and 27 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the authority.

Sec. 29. RCW 71.34.710 and 2020 c 302 s 83 are each amended to read as follows:

(1)(a) When a designated crisis responder receives information that an adolescent as a result of a behavioral health disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the designated crisis responder may take the adolescent, or cause the adolescent to be taken, into custody and transported to an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program providing inpatient treatment.

A secure withdrawal management and stabilization facility or approved substance use disorder treatment program must be available and have adequate space for the adolescent.

(b) If a designated crisis responder decides not to detain an adolescent for evaluation and treatment under RCW 71.34.700(2), or forty-eight hours have elapsed since a designated crisis responder received a request for investigation and the designated crisis responder has not taken action to have the adolescent detained, an immediate family member or guardian or conservator of the adolescent may petition the superior court for the adolescent's detention using the procedures under RCW 71.05.201 and 71.05.203; however, when the court enters an order of initial detention, except as otherwise expressly stated in this chapter, all procedures

must be followed as if the order has been entered under (a) of this subsection.

(c) The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.

(2)(a) Within twelve hours of the adolescent's arrival at the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, the designated crisis responder shall serve or cause to be served on the adolescent a copy of the petition for initial detention, notice of initial detention, and statement of rights. The designated crisis responder shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The designated crisis responder shall commence service of the petition for initial detention and notice of the initial detention on the adolescent's parent and the adolescent's attorney as soon as possible following the initial detention.

~~(b) ((If the adolescent is involuntarily detained at an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program in a different county from where the adolescent was initially detained, the))~~ The facility or program may serve the adolescent, notify the adolescent's parents and the adolescent's attorney, and file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service when filing with the court at the request of the designated crisis responder.

(3)(a) At the time of initial detention, the designated crisis responder shall advise the adolescent both orally and in writing that if admitted to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program for inpatient treatment, a commitment

hearing shall be held within one hundred twenty hours of the adolescent's provisional acceptance to determine whether probable cause exists to commit the adolescent for further treatment.

(b) The adolescent shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the adolescent is indigent.

(4) Subject to subsection (5) of this section, whenever the designated crisis responder petitions for detention of an adolescent under this chapter, an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program providing one hundred twenty hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the adolescent's arrival, the facility must evaluate the adolescent's condition and either admit or release the adolescent in accordance with this chapter.

(5) A designated crisis responder may not petition for detention of an adolescent to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program unless there is a secure withdrawal management and stabilization facility or approved substance use disorder treatment program available and that has adequate space for the adolescent.

(6) If an adolescent is not approved for admission by the inpatient evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, the facility shall make such recommendations and referrals for further care and treatment of the adolescent as necessary.

(7) Dismissal of a commitment petition is not the appropriate remedy for a violation of the timeliness requirements of this section, based on the purpose of this chapter under RCW 71.34.010, except in the few cases where the facility staff or the designated crisis responder have totally disregarded the requirements of this section.

Sec. 30. RCW 71.34.710 and 2020 c 302 s 84 are each amended to read as follows:

(1)(a) When a designated crisis responder receives information that an adolescent as a result of a behavioral health disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the designated crisis responder may take the adolescent, or cause the adolescent to be taken, into custody and transported to an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program providing inpatient treatment.

(b) If a designated crisis responder decides not to detain an adolescent for evaluation and treatment under RCW 71.34.700(2), or forty-eight hours have elapsed since a designated crisis responder received a request for investigation and the designated crisis responder has not taken action to have the adolescent detained, an immediate family member or guardian or conservator of the adolescent may petition the superior court for the adolescent's detention using the procedures under RCW 71.05.201 and 71.05.203; however, when the court enters an order of initial detention, except as otherwise expressly stated in this chapter, all procedures must be followed as if the order has been entered under (a) of this subsection.

(c) The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.

(2)(a) Within twelve hours of the adolescent's arrival at the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, the designated crisis responder shall serve or cause to be served on the adolescent a copy of the petition for initial detention, notice of initial detention, and statement of rights. The designated crisis responder shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of

rights along with an affidavit of service. The designated crisis responder shall commence service of the petition for initial detention and notice of the initial detention on the adolescent's parent and the adolescent's attorney as soon as possible following the initial detention.

(b) ~~((If the adolescent is involuntarily detained at an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program in a different county from where the adolescent was initially detained, the))~~ The facility or program may serve the adolescent, notify the adolescent's parents and the adolescent's attorney, and file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service when filing with the court at the request of the designated crisis responder.

(3)(a) At the time of initial detention, the designated crisis responder shall advise the adolescent both orally and in writing that if admitted to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program for inpatient treatment, a commitment hearing shall be held within one hundred twenty hours of the adolescent's provisional acceptance to determine whether probable cause exists to commit the adolescent for further treatment.

(b) The adolescent shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the adolescent is indigent.

(4) Whenever the designated crisis responder petitions for detention of an adolescent under this chapter, an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program providing one hundred twenty hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the adolescent's arrival, the facility must evaluate the adolescent's condition and either admit

or release the adolescent in accordance with this chapter.

(5) If an adolescent is not approved for admission by the inpatient evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, the facility shall make such recommendations and referrals for further care and treatment of the adolescent as necessary.

(6) Dismissal of a commitment petition is not the appropriate remedy for a violation of the timeliness requirements of this section, based on the purpose of this chapter under RCW 71.34.010, except in the few cases where the facility staff or the designated crisis responder have totally disregarded the requirements of this section.

Sec. 31. RCW 71.34.720 and 2020 c 302 s 86 are each amended to read as follows:

(1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist, for minors admitted as a result of a mental disorder, or by a substance use disorder professional or co-occurring disorder specialist, for minors admitted as a result of a substance use disorder, as to the child's mental condition and by a physician, physician assistant, or psychiatric advanced registered nurse practitioner as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, ~~((after))~~ at any time during the involuntary treatment hold and following the initial examination and evaluation, the children's mental health specialist or substance use disorder specialist and the physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the initial needs of the minor, if detained to an evaluation and treatment facility, would be better served by placement in a secure withdrawal management and stabilization facility or approved substance use disorder treatment program or, if detained to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, would be better served in an evaluation and treatment facility, then

the minor shall be referred to the more appropriate placement for the remainder of the current commitment period without any need for further court review; however a minor may only be referred to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program if there is a secure withdrawal management and stabilization facility or approved substance use disorder treatment program available and that has adequate space for the minor.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial one hundred twenty hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. A minor must not be denied the opportunity to consult an attorney unless there is an immediate risk of harm to the minor or others.

(5) If the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed one hundred twenty hours from the time of provisional acceptance. The computation of such one hundred twenty hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed one hundred twenty hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter.

Sec. 32. RCW 71.34.720 and 2020 c 302 s 87 are each amended to read as follows:

(1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist, for minors admitted as a result of a mental disorder, or by a substance use disorder professional or co-occurring disorder specialist, for minors admitted as a

result of a substance use disorder, as to the child's mental condition and by a physician, physician assistant, or psychiatric advanced registered nurse practitioner as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, ~~((after))~~ at any time during the involuntary treatment hold and following the initial examination and evaluation, the children's mental health specialist or substance use disorder specialist and the physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the initial needs of the minor, if detained to an evaluation and treatment facility, would be better served by placement in a secure withdrawal management and stabilization facility or approved substance use disorder treatment program or, if detained to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, would be better served in an evaluation and treatment facility, then the minor shall be referred to the more appropriate placement for the remainder of the current commitment period without any need for further court review.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial one hundred twenty hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. A minor must not be denied the opportunity to consult an attorney unless there is an immediate risk of harm to the minor or others.

(5) If the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed one hundred twenty hours from the time of provisional acceptance. The computation of such one hundred twenty hour period shall exclude

Saturdays, Sundays, and holidays. This initial treatment period shall not exceed one hundred twenty hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter.

NEW SECTION. Sec. 33. Sections 1, 3, 5, 7, 9, 13, 29, and 31 of this act expire July 1, 2026.

NEW SECTION. Sec. 34. Sections 2, 4, 6, 8, 10, 14, 30, and 32 of this act take effect July 1, 2026.

NEW SECTION. Sec. 35. Sections 19 and 24 of this act expire July 1, 2022.

NEW SECTION. Sec. 36. Sections 20 and 25 of this act take effect July 1, 2022.

NEW SECTION. Sec. 37. Sections 24, 26, and 29 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. Sec. 38. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Caldier; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Johnson, J.; Lekanoff; Pollet; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Jacobsen and Rude.

Referred to Committee on Rules for second reading.

March 31, 2021

ESSB 5097 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Expanding coverage of the paid family and medical

leave program. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature intends to prevent impacts, based on this act, to the family and medical leave insurance account or the application of a solvency surcharge.

Sec. 2. RCW 50A.05.010 and 2020 c 125 s 1 are each amended to read as follows:

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

(1) (a) "Casual labor" means work that:

(i) Is performed infrequently and irregularly; and

(ii) If performed for an employer, does not promote or advance the employer's customary trade or business.

(b) For purposes of casual labor:

(i) "Infrequently" means work performed twelve or fewer times per calendar quarter; and

(ii) "Irregularly" means work performed not on a consistent cadence.

(2) "Child" includes a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(3) "Commissioner" means the commissioner of the department or the commissioner's designee.

(4) "Department" means the employment security department.

(5) (a) "Employee" means an individual who is in the employment of an employer.

(b) "Employee" does not include employees of the United States of America.

(6) "Employee's average weekly wage" means the quotient derived by dividing the employee's total wages during the two quarters of the employee's qualifying period in which total wages were highest by twenty-six. If the result is not a multiple of one dollar, the department must round the result to the next lower multiple of one dollar.

(7) (a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(b) "Employer" does not include the United States of America.

(8) (a) "Employment" means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term "employment" includes an individual's entire service performed within or without or both within and without this state, if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state, but some of the service is performed in this state; and

(A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) "Employment" does not include:

(i) Self-employed individuals;

(ii) Casual labor;

(iii) Services for remuneration when it is shown to the satisfaction of the commissioner that:

(A)(I) Such individual has been and will continue to be free from control or

direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; or

(B) As a separate alternative:

(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(V) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and

businesses and has registered for and received a unified business identifier number from the state of Washington; and

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; or

(iv) Services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW rendered by an individual when:

(A) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(D) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(E) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid

by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(F) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(G) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

(9) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions.

(10) "Family leave" means any leave taken by an employee from work:

(a) To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(b) To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of a child under the age of eighteen with the employee; or

(c) Because of any qualifying exigency as permitted under the federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E) and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on October 19, 2017, for family members as defined in subsection ~~((10))~~ ((11)) of this section.

(11) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.

(12) "Grandchild" means a child of the employee's child.

(13) "Grandparent" means a parent of the employee's parent.

(14) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person determined by the commissioner to be capable of providing health care services.

(15) "Medical leave" means any leave taken by an employee from work made necessary by the employee's own serious health condition.

(16) "Paid time off" includes vacation leave, personal leave, medical leave, sick leave, compensatory leave, or any other paid leave offered by an employer under the employer's established policy.

(17) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(18) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of a serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(19) "Premium" or "premiums" means the payments required by RCW 50A.10.030 and paid to the department for deposit in the family and medical leave insurance account under RCW 50A.05.070.

(20) "Qualifying period" means the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.

(21)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific

period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, is considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Remuneration also includes settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date. The proceeds are deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Remuneration does not include:

(i) The payment of tips;

(ii) Supplemental benefit payments made by an employer to an employee in addition to any paid family or medical leave benefits received by the employee; or

(iii) Payments to members of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(22)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times, within thirty days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's

assistant under direct supervision of a health care provider, or by a provider of health care services, such as a physical therapist, under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits, defined as at least twice a year, for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity, including asthma, diabetes, and epilepsy;

(D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider, including Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an accident or other injury; or (II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) The requirement in (a)(i) and (ii) of this subsection for treatment by a health care provider means an in-person visit to a health care provider. The first, or only, in-person treatment visit

must take place within seven days of the first day of incapacity.

(c) Whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty-day period shall be determined by the health care provider.

(d) The term extenuating circumstances in (a)(ii)(A)(I) of this subsection means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty-day period, but the health care provider does not have any available appointments during that time period.

(e) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition, such as oxygen. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this title.

(f) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, and periodontal disease are examples of conditions that are not serious health conditions and do not qualify for leave under this title. Restorative dental or plastic surgery

after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(g)(i) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a licensed substance abuse treatment provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this title.

(ii) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take medical leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking medical leave. An employee may also take family leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this title even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(23) "Service is localized in this state" has the same meaning as described in RCW 50.04.120.

(24) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(25) "State average weekly wage" means the most recent average weekly wage calculated under RCW 50.04.355 and available on January 1st of each year.

(26) "Supplemental benefit payments" means payments made by an employer to an employee as salary continuation or as paid time off. Such payments must be in addition to any paid family or medical leave benefits the employee is receiving.

(27) "Typical workweek hours" means:

(a) For an hourly employee, the average number of hours worked per week by an employee within the qualifying period; and

(b) Forty hours for a salaried employee, regardless of the number of hours the salaried employee typically works.

(28) "Wage" or "wages" means:

(a) For the purpose of premium assessment, the remuneration paid by an employer to an employee. The maximum wages subject to a premium assessment are those wages as set by the commissioner under RCW 50A.10.030;

(b) For the purpose of payment of benefits, the remuneration paid by one or more employers to an employee for employment during the employee's qualifying period. At the request of an employee, wages may be calculated on the basis of remuneration payable. The department shall notify each employee that wages are calculated on the basis of remuneration paid, but at the employee's request a redetermination may be performed and based on remuneration payable; and

(c) For the purpose of a self-employed person electing coverage under RCW 50A.10.010, the meaning is defined by rule.

NEW SECTION. Sec. 3. (1) The employment security department must collect and analyze disaggregated data relating to employment protections under Title 50A RCW. The employment security department must develop the proposed plan for data collection and analysis in

consultation with the paid family and medical leave advisory committee.

(2) By December 1, 2021, the employment security department must submit a report to the appropriate committees of the legislature with the following information:

(a) Program utilization by employees covered under approved voluntary plans compared to employees covered under the state plan; and

(b) Program utilization by employees working for employers with 50 or more employees compared to employees working for employers with fewer than 50 employees.

(3) By June 30, 2022, and June 30, 2023, the employment security department must submit a report to the appropriate committees of the legislature with the following information:

(a) The number of individuals who used leave under Title 50A RCW in the preceding 12 months as a result of the amended definition of family member in this act; and

(b) The effects, if any, on the family and medical leave insurance account as a result of the amended definition of family member in this act.

(4) The employment security department must provide members of the paid family and medical leave advisory committee opportunity for comment on the reports under subsections (2) and (3) of this section. Comments provided through this process must be included in a separate section of each final report.

NEW SECTION. Sec. 4. If the number of individuals utilizing leave under Title 50A RCW as a result of the amended definition of family member in this act exceeds 500 individuals in any calendar year before July 1, 2023, the expenses of the additional leave must be paid by the general fund into the family and medical leave insurance account created in RCW 50A.05.070."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

ESSB 5118 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Supporting successful reentry. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Children, Youth & Families.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.98.010 and 2011 c 336 s 345 are each amended to read as follows:

(1) Whenever a person has entered upon a term of imprisonment in a penal ~~((or))~~, correctional, or juvenile rehabilitation institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the ~~((prisoner))~~ person, he or she shall be brought to trial within ~~((one hundred twenty))~~ 120 days after he or she shall have caused to be delivered to the prosecuting attorney and the ~~((superior))~~ court ((of the county)) in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint ~~((+ PROVIDED, That for))~~. The following time periods shall be excluded from the 120-day calculation:

(a) Arraignment, pretrial proceedings, trial, and sentencing on an unrelated charge in a different county than the court where the charge is pending;

(b) Proceedings related to competency to stand trial on the pending charge, from the entry of an evaluation order to the entry of a court order finding the person competent to proceed; and

(c) Time during which the person is detained in a federal jail or prison and

subject to conditions of release not imposed by the state of Washington.

(2) The superintendent or the superintendent's designee who provides the certificate under subsection (4) of this section shall inform any prosecuting attorney or court requesting transportation of the person to resolve an untried indictment, information, or complaint of the person's current location and availability for trial. If the person is unavailable for transportation due to court proceedings in another county, the superintendent shall inform the prosecuting attorney or court when the person becomes available for transportation and provide a new certificate containing the information under subsection (4) of this section.

(3) For good cause shown in open court, with the ~~((prisoner))~~ person or his or her counsel ~~((shall have))~~ having the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) The request of the ~~((prisoner))~~ person shall be accompanied by a certificate of the superintendent or the superintendent's designee having custody of the ~~((prisoner))~~ person, stating the term of commitment under which the ~~((prisoner))~~ person is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the ~~((time of parole eligibility))~~ earned release date of the ~~((prisoner))~~ person, and any decisions of the indeterminate sentence review board relating to the ~~((prisoner))~~ person.

~~((+2))~~ (5) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the ~~((prisoner))~~ person to the superintendent or the superintendent's designee having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior, district, municipal, or juvenile court by certified mail, return receipt requested.

~~((+3))~~ (6) The superintendent or the superintendent's designee having custody of the ~~((prisoner))~~ person shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the superintendent or the superintendent's designee has knowledge and of his or her

right to make a request for final disposition thereof.

~~((4))~~ (7) Escape from custody by the ~~((prisoner))~~ person subsequent to his or her execution of the request for final disposition referred to in subsection (1) of this section shall void the request.

Sec. 2. RCW 36.70A.200 and 2020 c 128 s 1 and 2020 c 20 s 1027 are each reenacted and amended to read as follows:

(1)(a) 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, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, community facilities as defined in RCW 72.05.020, and secure community transition facilities as defined in RCW 71.09.020.

(b) Unless a facility is expressly listed in (a) of this subsection, essential public facilities do not include facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings but are not used for punishment, correction, counseling, or rehabilitation following the conviction of a criminal offense. Facilities included under this subsection (1)(b) shall not include facilities detaining persons under RCW 71.09.020 (6) or (15) or chapter 10.77 or 71.05 RCW.

(c) The department of children, youth, and families may not attempt to site new community facilities as defined in RCW 72.05.020 east of the crest of the Cascade mountain range unless there is an equal or greater number of sited community facilities as defined in RCW 72.05.020 on the western side of the crest of the Cascade mountain range.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than 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 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 42.17A.005, 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 RCW 71.09.341.

(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 70A.135.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(3); 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 13.40 RCW to read as follows:

(1) At least 30 days before release from a residential facility, the secretary shall send written notice of the planned release to the person's health care insurance provider. The notice shall include the person's current location and contact information as well as the person's expected location and contact information upon release. The notice shall not disclose the person's incarceration status unless their consent is given.

(2) If the person is not enrolled in a health insurance program, the secretary and the health care authority shall assist the person in obtaining coverage for which they are eligible in accordance with the time frames specified in subsection (1) of this section.

(3) The secretary may share with the health insurance provider additional health information related to the person to assist with care coordination and continuity of care consistent with RCW 70.02.230(2)(u) and other provisions of chapter 70.02 RCW."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Caldier; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Hoff; Jacobsen; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

ESSB 5119 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Concerning individuals in custody. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff;

Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Boehnke; Dye; Jacobsen and Schmick.

MINORITY recommendation: Do not pass. Signed by Representative Chandler.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5121 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Expanding eligibility for the graduated reentry program. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9.94A.733 and 2018 c 166 s 1 are each amended to read as follows:

(1) (~~No more than the final six months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department. However, an offender may not participate in the graduated reentry program under this section unless he or she has served at least twelve months in total confinement in a state correctional facility.~~) (a) Except as provided in (b) of this subsection, an offender may not participate in the graduated reentry program under this subsection unless he or she has served at least six months in total confinement in a state correctional facility.

(i) An offender subject to (a) of this subsection may serve no more than the final five months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department.

(ii) Home detention under (a) of this subsection may not be imposed for individuals subject to a deportation order, civil commitment, or the interstate compact for adult offender supervision under RCW 9.94A.745.

(b) For offenders who meet the requirements of (b)(iii) of this subsection, an offender may not participate in the graduated reentry program unless he or she has served at least four months in total confinement in a state correctional facility.

(i) An offender under this subsection (1)(b) may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department.

(ii) Home detention under this subsection (1)(b) may not be imposed for individuals subject to a deportation order or subject to the jurisdiction of the indeterminate sentence review board.

(iii) Home detention under this subsection (1)(b) may not be imposed for offenders currently serving a term of confinement for the following offenses:

(A) Any sex offense;

(B) Any violent offense; or

(C) Any crime against a person offense in accordance with the categorization of crimes against persons outlined in RCW 9.94A.411(2).

(2) The secretary of the department may transfer an offender from a department correctional facility to home detention in the community if it is determined that the graduated reentry program is an appropriate placement and must assist the offender's transition from confinement to the community.

(3) The department and its officers, agents, and employees are not liable for the acts of offenders participating in the graduated reentry program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(4) All offenders placed on home detention as part of the graduated reentry program must provide an approved residence and living arrangement prior to transfer to home detention.

(5) While in the community on home detention as part of the graduated reentry program, the department must:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment

that the department shall assign based on an offender's assessed need; and

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements.

(6) The department retains the authority to return any offender serving partial confinement in the graduated reentry program to total confinement for any reason including, but not limited to, the offender's noncompliance with any sentence requirement.

(7) The department may issue rental vouchers for a period not to exceed six months for those transferring to partial confinement under this section if an approved address cannot be obtained without the assistance of a voucher.

(8) In the selection of offenders to participate in the graduated reentry program, and in setting, modifying, and enforcing the requirements of the graduated (~~release [reentry]~~) reentry program, the department is deemed to be performing a quasi-judicial function.

(9) The department shall publish a monthly report on its website with the number of offenders who were transferred during the month to home detention as part of the graduated reentry program. The department shall submit an annual report by December 1st to the appropriate committees of the legislature with the number of offenders who were transferred to home detention as part of the graduated reentry program during the prior year.

Sec. 2. RCW 9.94A.728 and 2018 c 166 s 2 are each amended to read as follows:

(1) 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:

(a) An offender may earn early release time as authorized by RCW 9.94A.729;

(b) 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;

(c) (i) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(A) The offender has a medical condition that is serious and is expected to require costly care or treatment;

(B) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(C) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(ii) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(iii) 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, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(iv) The secretary may revoke an extraordinary medical placement under this subsection (1)(c) at any time.

(v) Persistent offenders are not eligible for extraordinary medical placement;

(d) 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;

(e) No more than the final twelve months of the offender's term of confinement may be served in partial confinement for aiding the offender with: Finding work as part of the work release program under chapter 72.65 RCW; or reestablishing himself or herself in the community as part of the parenting program in RCW 9.94A.6551. This is in addition to that period of earned early release time that may be exchanged for

partial confinement pursuant to RCW 9.94A.729(5)(d);

(f) ~~((No more than the final six months))~~ (i) No more than the final five months of the offender's term of confinement may be served in partial confinement as home detention as part of the graduated reentry program developed by the department under RCW 9.94A.733(1)(a);

(ii) For eligible offenders under RCW 9.94A.733(1)(b), after serving at least four months in total confinement in a state correctional facility, an offender may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department;

(g) The governor may pardon any offender;

(h) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(i) 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;

(j) 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; and

(k) Any person convicted of one or more crimes committed prior to the person's eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730.

(2) Offenders residing in a juvenile correctional facility placement pursuant to RCW 72.01.410(1)(a) are not subject to the limitations in this section.

NEW SECTION. Sec. 3. The changes to restrictions on partial confinement and the graduated reentry program under sections 1 and 2 of this act apply prospectively and retroactively to persons currently serving a sentence in any facility or institution either operated by the state or utilized under contract."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmirck and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5122 Prime Sponsor, Committee on Human Services, Reentry & Rehabilitation: Concerning the jurisdiction of juvenile court. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Children, Youth & Families.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that the goal of the juvenile justice system should be to protect public safety, connect youth with age-appropriate services that reduce the risk of recidivism, and provide meaningful rehabilitation so all youth can have the opportunity for success in life. The legislature declares that responses to problematic behaviors of youth should be guided by evidence-based practices and that policy changes to the system should be strongly rooted in eliminating racial inequities.

The legislature recognizes that a scientific consensus has developed that demonstrates that youth continue to develop neurologically until age 26. The legislature finds that youth ages eight through 12 are less capable of making fully informed decisions and youth ages 18 and 19 are particularly susceptible to outside factors influencing their decision making.

The legislature recognizes that on January 18, 2021, the Washington state board of health released a review regarding the health impacts of raising the age of the juvenile court's

jurisdiction to likely decrease the juvenile criminal legal system's involvement for some youth ages eight through 12 and to likely decrease the adult criminal legal system's involvement for some emerging adults ages 18 and 19. The board further found very strong evidence that this would decrease juvenile recidivism and improve health outcomes, access to employment opportunities, housing access, and economic stability.

The legislature intends to amend jurisdiction of juvenile court to include youth ages 13 through 19, with certain exceptions, and consider expanding juvenile court jurisdiction to include individuals over age 19. The legislature recognizes the important role that local governments play in ensuring access to justice in the juvenile court system. The legislature recognizes that amended jurisdiction in juvenile court may increase expenses for juvenile court systems despite significant offset savings in the adult system through reduced adult caseloads. The legislature intends to partner with local governments, courts, and other stakeholders to ensure successful expansion of juvenile court jurisdiction. The legislature therefore resolves to convene the raise the age juvenile justice task force to examine and plan for implementation of expanded juvenile court jurisdiction.

NEW SECTION. Sec. 2. A new section is added to chapter 43.216 RCW to read as follows:

(1) The raise the age juvenile justice task force is established, with members as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(c) The president of the senate and the speaker of the house of representatives jointly shall appoint one member as follows unless specified representing the:

(i) Juvenile rehabilitation administration;

(ii) Department of corrections;

(iii) Washington association of sheriffs and police chiefs;

(iv) Office of public defense;

(v) Washington association of prosecuting attorneys;

(vi) District and municipal court judges' association;

(vii) Administrative office of the courts;

(viii) Washington state association of counties, with one member representing the Washington state association of counties generally and one member representing the Washington state association of counties having expertise in county facilities;

(ix) Association of Washington cities;

(x) Washington state council of county and city employees;

(xi) Office of the superintendent of public instruction;

(xii) Minority and justice commission;

(xiii) Superior court judges' association, one member representing western Washington and one representing eastern Washington;

(xiv) Washington association of juvenile court administrators, one member representing western Washington and one representing eastern Washington;

(xv) Washington state school directors' association, a member representing a school district that provides education services to a juvenile rehabilitation residential facility;

(xvi) Department of health;

(xvii) Statewide organization representing public defense attorneys;

(xviii) Department of children, youth, and families;

(xix) Communities who have been impacted or served by the juvenile justice system, with two members from these communities;

(xx) Medical community with expertise in adolescent brain development;

(xxi) Organizations representing the interests of incarcerated persons, with two representatives each representing different programs and serving different constituencies; and

(xxii) Organizations representing the interests of youth involved in the juvenile justice system, with three representatives from different regions of the state or representing different programs.

(2) The legislative membership shall convene the initial meeting of the task force no later than September 1, 2021. The task force shall choose its chair from among its legislative membership.

(3) Staff support for the task force must be provided by the office of juvenile justice.

(4) Taking into consideration research and case law regarding adolescent brain development, the task force shall consider and provide recommendations regarding:

(a) Implementation of juvenile jurisdiction expansion to encompass persons 18 years old and 19 years old; and

(b) Expansion of juvenile court jurisdiction to include ages above 19 years of age.

(5) On or before December 1, 2022, the task force shall report to the governor and appropriate committees of the legislature on the status and plan for the expansion, including necessary funding, essential personnel and programmatic resources, measures necessary to avoid a negative impact on the state's child protection response, and specific milestones related to operations and policy, including:

(a) A timeline for structural and systemic changes within the juvenile justice system for the juvenile rehabilitation division, the department of children, youth, and families, the department of corrections, and the juvenile court pursuant to chapter 13.04 RCW;

(b) An operations and business plan that defines benchmarks, including possible changes to resource allocations;

(c) Review of the estimated costs avoided by local and state governments with the reduction of recidivism and an analysis of cost savings reinvestment options;

(d) Anticipated county and state facility changes and modifications, including a timeline or planning needed

to successfully expand juvenile court jurisdiction;

(e) Estimated new costs incurred to provide juvenile justice services to persons 18 years old and 19 years old; and

(f) A clearly defined path for geographic consistency given varying local resources, staff, physical plant limitations, training, services, and partnering needs.

(6) (a) Legislative members of the task force may be reimbursed for travel expenses in accordance with RCW 44.04.120. Except as provided in (b) of this subsection, nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(b) Nonlegislative members of the task force who demonstrate financial hardship must be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, as well as other expenses as needed for each day a nonlegislative task force member attends a task force meeting to provide consultative assistance.

(7) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(8) The task force must hold at least one meeting a month. The task force may form work groups and may consult experts in fields that will inform and assist the work of the task force.

(9) This section expires January 1, 2023.

Sec. 3. RCW 9A.04.050 and 2011 c 336 s 347 are each amended to read as follows:

Children under the age of ~~((eight))~~ 13 years are incapable of committing crime. Children of eight ~~((and under))~~ through twelve years of age who are charged with murder in the first or second degree are presumed to be incapable of committing crime, but this presumption may be ~~((removed by proof))~~ rebutted by clear

and convincing evidence that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age.

Sec. 4. RCW 13.40.590 and 2002 c 237 s 10 are each amended 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))~~ 13 through ~~((seventeen))~~ 17; 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.

Sec. 5. RCW 13.40.600 and 2002 c 237 s 11 are each amended to read as follows:

(1) Youth courts have authority over juveniles ages ~~((eight))~~ 13 through ~~((seventeen))~~ 17 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. 6.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5133 Prime Sponsor, Senator Conway:
Concerning the definition of confidential

employee for the purposes of state collective bargaining. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Hoff; Jacobsen; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representatives MacEwen, Assistant Ranking Minority Member; Caldier; Harris and Rude.

Referred to Committee on Rules for second reading.

March 31, 2021

E2SSB 5141 Prime Sponsor, Committee on Ways & Means: Reducing environmental and health disparities and improving the health of all Washington state residents by implementing the recommendations of the environmental justice task force. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Environment & Energy.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The purpose of this chapter is to reduce environmental and health disparities in Washington state and improve the health of all Washington state residents. This chapter implements the recommendations of the environmental justice task force established in section 221(48), chapter 415, Laws of 2019 entitled "Report to the Washington state governor and legislature, *Environmental Justice Task Force: Recommendations for Prioritizing EJ in Washington State Government* (October 2020)."

(2) As conveyed in the task force report, Washington state studies and national studies found that people of color and low-income people continue to be disproportionately exposed to environmental harms in their communities. As a result, there is a

higher risk of adverse health outcomes for those communities. This risk is amplified when overlaid on communities with preexisting social and economic barriers and environmental risks, and creates cumulative environmental health impacts, which this act seeks to prevent and mitigate.

This chapter also seeks to reduce exposure to environmental hazards within Indian country, as defined in 18 U.S.C. Sec. 1151, due to off-reservation activities within the state, and to improve state practices to reduce contamination of traditional foods wherever they occur. Exposure to such hazards can result in generational health and ecological problems, particularly on small reservations where it is impossible to move away from a hazard.

(3) Accordingly, the state has a compelling interest in preventing and addressing such environmental health disparities in the administration of ongoing and new environmental programs, including allocation of funds, and in administering these programs so as to remedy the effects of past disparate treatment of overburdened communities and vulnerable populations.

(4) The task force provided recommendations to state agencies for measurable goals and model policies to reduce environmental health inequities in Washington, equitable practices for meaningful community involvement, and how to use the environmental health disparities map to identify and promote the equitable distribution of environmental benefits to overburdened communities. In order for all communities in Washington state to be healthy and thriving, state government should aim to concentrate government actions to benefit communities that currently have the greatest environmental and health burdens.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Council" means the environmental justice council established in section 20 of this act.

(2) "Covered agency" means the departments of ecology, health, natural resources, commerce, agriculture, and transportation, the Puget Sound partnership, and any agency that opts to

assume all of the obligations of this act pursuant to section 11 of this act.

(3) "Cumulative environmental health impact" means the combined, multiple environmental impacts and health impacts on a vulnerable population or overburdened community.

(4) "Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need identified by an overburdened community or vulnerable population that is consistent with the intent of this chapter.

(5) "Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, and projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change;

(c) Loss or impairment of ecosystem functions or traditional food resources and loss of access to gather cultural resources or harvest traditional foods; and

(d) Health and economic impacts from climate change.

(6) "Environmental health disparities map" means the data and information developed pursuant to section 19 of this act.

(7) "Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting or expected to result from a proposed action.

(8) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, equitably distributing resources and benefits, and eliminating harm.

(9) "Equitable distribution" means a fair and just, but not necessarily equal, allocation intended to mitigate disparities in benefits and burdens, and based on current conditions, including existing legacy and cumulative impacts, that are informed by cumulative environmental health impact analysis.

(10) "Evidence-based" means a process that is conducted by a systematic review of available data based on a well-established and widely used hierarchy of data in current use by other state and national programs, selected by the departments of ecology and health. The environmental justice council may provide input on the development of the process.

(11) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

(12) "Significant agency action" means the following actions when reasonably evident, at the beginning of a covered agency's consideration of the significant agency action or at the time when an environmental justice assessment would normally be initiated in conjunction with an agency action, that the action may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population:

(a) The process of developing and adopting significant legislative rules as defined in RCW 34.05.328;

(b) The development and adoption of any new grant or loan program that a

covered agency is explicitly authorized or required by statute to carry out;

(c) Transportation projects that increase the capacity of the state transportation system, such as system capacity expansion projects and new state highway, ferry, or freight facilities;

(d) Major capital projects of at least \$12,000,000;

(e) The submission of agency request legislation to the office of the governor or the office of financial management for approval; and

(f) Any other agency actions deemed significant by a covered agency consistent with section 14 of this act.

(13) "Tribal lands" has the same meaning as "Indian country" as provided in 18 U.S.C. Sec. 1151, and also includes sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law.

(14) (a) "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

(b) "Vulnerable populations" includes, but is not limited to:

(i) Racial or ethnic minorities;

(ii) Low-income populations;

(iii) Populations disproportionately impacted by environmental harms; and

(iv) Populations of workers experiencing environmental harms.

NEW SECTION. Sec. 3. ENVIRONMENTAL JUSTICE OBLIGATIONS FOR ALL AGENCIES. Covered agencies are required to comply with all provisions of this chapter. All other state agencies should strive to apply the laws of the state of Washington, and the rules and policies of the agency, in accordance with the policies of this chapter including, to

the extent feasible, incorporating the principles of environmental justice assessment processes set forth in section 14 of this act into agency decisions.

NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF HEALTH.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21A RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF ECOLOGY.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.23 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF AGRICULTURE.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 7.** A new section is added to chapter 43.30 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF NATURAL RESOURCES.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 8.** A new section is added to chapter 43.330 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF COMMERCE.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 9.** A new section is added to chapter 47.01 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF TRANSPORTATION.

The department must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 10.** A new section is added to chapter 90.71 RCW to read as follows:

ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE PUGET SOUND PARTNERSHIP.

The partnership must apply and comply with the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act).

NEW SECTION. **Sec. 11.** AUTHORITY OF OTHER AGENCIES TO OPT IN TO ENVIRONMENTAL JUSTICE OBLIGATIONS. (1) Any state agency, as the term "agency" is defined in RCW 34.05.010, including the governor's office and the office of the attorney general but excluding local governmental entities, may opt in to assume all of the substantive and procedural requirements of covered agencies under chapter 70A.--- RCW (the new chapter created in section 24 of this act) at any time by notifying the council established in section 20 of this act.

(2) An agency that opts in to assume all of the substantive and procedural requirements of chapter 70A.--- RCW (the new chapter created in section 24 of this act) is not subject to the deadlines or timelines established in sections 12, 13, 14, 16, and 20 of this act.

NEW SECTION. **Sec. 12.** INCORPORATING ENVIRONMENTAL JUSTICE INTO AGENCY STRATEGIC PLANS. (1) By January 1, 2023, each covered agency shall include an environmental justice implementation plan within its strategic plan. A covered agency may additionally incorporate an environmental justice implementation plan into other significant agency planning documents. The plan must describe how the covered agency plans to apply the principles of environmental justice to the agency's activities and guide the agency in its implementation of its obligations under this chapter.

(2) In its environmental justice implementation plan, each covered agency must include:

(a) Agency-specific goals and deliverables to reduce environmental and health disparities and for otherwise achieving environmental justice in the agency's programs;

(b) Metrics to track and measure accomplishments of the agency goals and deliverables;

(c) Methods to embed equitable community engagement with, and equitable participation from, members of the public, into agency practices for soliciting and receiving public comment;

(d) Strategies to ensure compliance with existing federal and state laws and policies relating to environmental justice, including Title VI of the civil rights act of 1964, 42 U.S.C. Sec. 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681-1683, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, and the age discrimination act of 1975, 42 U.S.C. Sec. 6101-6107;

(e) The plan for community engagement required under section 13 of this act; and

(f) Specific plans and timelines for incorporating environmental justice considerations into agency activities as required under this chapter.

(3) In developing and updating its plan, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

NEW SECTION. Sec. 13. EQUITABLE COMMUNITY ENGAGEMENT AND PUBLIC PARTICIPATION. (1) By July 1, 2022, each covered agency must create and adopt a community engagement plan that describes how it will engage with overburdened communities and vulnerable populations as it evaluates new and existing activities and programs. This plan must describe how the agency plans to facilitate equitable participation and support meaningful and direct involvement of vulnerable populations and overburdened communities. The plan must include:

(a) How the covered agency will identify and prioritize overburdened communities for purposes of this chapter;

(b) Best practices for outreach and communication to overcome barriers to engagement with overburdened communities and vulnerable populations;

(c) Use of special screening tools that integrate environmental, demographic, and health disparities data, such as the environmental health disparities map, to evaluate and understand the nature and needs of the people who the agency expects to be impacted by significant agency actions under section 14 of this act and processes under section 16 of this act to overcome barriers to participation;

(d) Processes that facilitate and support the inclusion of members of communities affected by agency decision making including, to the extent legal and practicable, but not limited to, child care, and reimbursement for travel and other expenses; and

(e) Methods for outreach and communication with those who face barriers, language or otherwise, to participation.

(2) Covered agencies must regularly review their compliance with existing laws and policies that guide community engagement and must comply with the following:

(a) Title VI of the civil rights act, prohibiting discrimination based on race, color, or national origin and requiring meaningful access to people with limited English proficiency, and disability;

(b) Executive Order 05-03, requiring plain talk when communicating with the public; and

(c) Guidance related to Executive Order 13166, requiring meaningful access to agency programs and services for people with limited English proficiency.

(3) In developing and updating its plan, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

(4) A covered agency may coordinate with the office of equity to identify policy and system barriers to meaningful engagement with communities as conducted by the office under RCW 43.06D.040(1)(b).

NEW SECTION. Sec. 14. ENVIRONMENTAL JUSTICE ASSESSMENT. (1)(a) When considering a significant agency action initiated after July 1, 2023, a covered

agency must conduct an environmental justice assessment in accordance with this section to inform and support the agency's consideration of overburdened communities and vulnerable populations when making decisions and to assist the agency with the equitable distribution of environmental benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities.

(b) A covered agency must aspire to complete the environmental justice assessment for a significant agency action within 15 business days of initiating the assessment. A failure to achieve this aspirational 15-day deadline does not make an associated agency action subject to appeal under section 22 of this act.

(2)(a) Consistent with section 2(12)(f) of this act, for the purpose of preparing environmental justice assessments, a covered agency may deem actions significant that are additional to the significant agency actions identified in section 2(12)(a) through (e) of this act, in iterative consultation with the council and interagency work group established under section 20 of this act. By July 1, 2025, each covered agency must consider their agency's activities and identify and begin applying environmental justice assessments to any actions that the agency identifies as significant that are in addition to the significant agency actions identified in section 2(12)(a) through (e) of this act. Significant agency actions designated by a covered agency under this subsection must be actions that may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population.

(b) In the identification of significant agency actions, covered agencies shall consider guidance issued by the council established in section 20 of this act. Each covered agency must periodically review and update its identified types of significant agency actions for which an environmental justice assessment is required under this section, and the relevant factors to the agency's environmental justice assessments that result from the unique mission, authorities, and priorities of the agency.

(3) By July 1, 2023, and periodically thereafter, after an opportunity for public comment on its determinations, each covered agency must:

(a) Publish on its website the types of agency actions that the agency has determined are significant agency actions that require an environmental justice assessment under this section, including any significant agency actions identified under subsection (2)(a) of this section;

(b) Provide notification of the determination of the types of significant agency actions in the Washington State Register; and

(c) Prepare an environmental justice assessment when considering a listed action, after publication of the list of any additional significant agency actions identified under (a) of this subsection.

(4) At a minimum, environmental justice assessments must:

(a) Consider guidance prepared by the council under section 20 of this act relating to best practices on environmental justice assessments and when and how to use cumulative environmental health impact analysis;

(b) Use cumulative environmental health impact analysis, such as the environmental health disparities map or other data that considers the effects of a proposed action on overburdened communities and vulnerable populations;

(c) Identify overburdened communities and vulnerable populations who are expected to be affected by the proposed action and the potential environmental and health impacts;

(d) Identify if the proposed action is expected to have any local or regional impacts to federally reserved tribal rights and resources including, but not limited to, those protected by treaty, executive order, or federal law;

(e) Summarize community input and describe how the covered agency can further involve overburdened communities, vulnerable populations, affected tribes, and indigenous populations in development of the proposed action; and

(f) Describe options and, where practicable, related cost projections for the agency to reduce, mitigate, or

eliminate identified probable impacts on overburdened communities and vulnerable populations, or provide a justification for not reducing, mitigating, or eliminating identified probable impacts.

(5) To obtain information for the purposes of assessments, a covered agency must solicit feedback from members of overburdened communities and vulnerable populations to assist in the accurate assessment of the potential impact of the action and in developing the means to reduce or eliminate the impact on overburdened communities and vulnerable populations.

(6) Based on the environmental justice assessment, each covered agency must seek, to the extent legal and feasible and consistent with the underlying statute being implemented, to reduce or eliminate the environmental harms and maximize the environmental benefits created by the significant agency action on overburdened communities and vulnerable populations. Consistent with agency authority, mission, and statutory responsibilities, the covered agency must consider each of the following methods for reducing environmental harms or equitably distributing environmental benefits:

(a) Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations;

(b) Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations;

(c) Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations;

(d) Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action;

(e) Prioritizing equitable distribution of resources and benefits to overburdened communities;

(f) Promoting positive workforce and job outcomes for overburdened communities;

(g) Meeting community needs identified by the affected overburdened community;

(h) Modifying substantive regulatory or policy requirements; and

(i) Any other mitigation techniques, including those suggested by the council, the office of equity, or representatives of overburdened communities and vulnerable populations.

(7) If the covered agency determines it does not have the ability or authority to avoid or reduce any estimated environmental harm of the significant agency action on overburdened communities and vulnerable populations or address the distribution of environmental and health benefits, the agency must provide a clear explanation of why it has made that determination and provide notice of that explanation to members of the public who participated in the environmental justice assessment process for the significant agency action and who provided contact information to the agency.

(8) In developing a process for conducting environmental justice assessments, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

(9) The issuance of forest practices permits under chapter 76.09 RCW or sale of timber from state lands and state forestlands as defined in RCW 79.02.010 do not require an environmental justice assessment under this section.

NEW SECTION. Sec. 15. The obligation of a covered agency to conduct an environmental justice assessment pursuant to section 14 of this act for significant agency actions does not, by itself, trigger requirements in chapter 43.21C RCW.

NEW SECTION. Sec. 16. ENVIRONMENTAL JUSTICE OBLIGATIONS OF AGENCIES RELATING TO BUDGETS AND FUNDING. (1) With consideration of the guidelines issued by the council in section 20 of this act, and in iterative consultation with the council, each covered agency must incorporate environmental justice principles into its decision processes for budget development, making expenditures, and granting or withholding environmental benefits. Through the incorporation of environmental justice principles into its decision processes, including by conducting environmental justice assessments where required under section 14 of this act, each covered agency, to the extent allowed by law and consistent with legislative appropriations, must

equitably distribute funding and expenditures related to programs that address or may cause environmental harms or provide environmental benefits towards overburdened communities and vulnerable populations.

(2) Beginning on or before July 1, 2023, each covered agency must, where practicable, take the following actions when making expenditure decisions or developing budget requests to the office of financial management and the legislature for programs that address or may cause environmental harms or provide environmental benefits:

(a) Focus applicable expenditures on creating environmental benefits, including reducing or eliminating environmental harms, creating community and population resilience, and improving the quality of life of overburdened communities and vulnerable populations;

(b) Create opportunities for overburdened communities and vulnerable populations to meaningfully participate in agency expenditure decisions;

(c) Clearly articulate environmental justice goals and assessment metrics to communicate the basis for agency expenditures;

(d) Consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles, including:

(i) Community grants to monitor pollution;

(ii) Grants focused on building capacity and providing training for community scientists and other staff;

(iii) Making technical assistance available for communities that may be new to receiving agency grant funding; and

(iv) Education and work readiness youth programs focused on infrastructure or utility-related internships to develop career paths and leadership skills for youth; and

(e) Establish a goal of directing 40 percent of grants and expenditures that create environmental benefits to vulnerable populations and overburdened communities.

(3) A covered agency may adopt rules or guidelines for criteria and procedures applicable to incorporating environmental justice principles in

expenditure decisions under this section.

(4) In incorporating environmental justice principles into its decision processes for budget development, making expenditures, and granting or withholding benefits, each covered agency must consider any guidance developed by the council pursuant to section 20 of this act.

(5) A covered agency may not take actions or make expenditures under this section that are inconsistent with or conflict with other statutes or with conditions or limitations on the agency's appropriations.

(6) If a covered agency, due to the breadth of its programs and funding opportunities, determines it is not practicable to take the actions listed in subsection (2) of this section for all applicable expenditure decisions and budget requests developed, the covered agency is encouraged to prioritize taking the actions listed in subsection (2) of this section for those budget requests and expenditure decisions that are primarily directed at addressing environmental impacts. By July 1, 2023, each covered agency must publish on its website the types of decision processes for budget development, making expenditures, and granting or withholding environmental benefits for which the agency will take the actions listed in subsection (2) of this section.

NEW SECTION. Sec. 17. REPORTING REQUIREMENTS. (1) By September 1st of each year, each covered agency must annually update the council on the development and implementation of environmental justice in agency strategic plans pursuant to section 12 of this act, budgeting and funding criteria for making budgeting and funding decisions pursuant to section 16 of this act, and community engagement plans pursuant to section 13 of this act.

(2)(a) Beginning in 2024, as part of each covered agency's annual update to the council under subsection (1) of this section, each covered agency must include updates on the agency's implementation status with respect to the environmental justice assessments under section 14 of this act.

(b) By September 1st of each year beginning in 2024, each covered agency must publish or update a dashboard report, in a uniform dashboard format on

the office of financial management's website, describing the agency's progress on:

(i) Environmental justice in its strategic plan;

(ii) The obligations of agencies relating to budgets and funding under section 16 of this act; and

(iii) Its environmental justice assessments of proposed significant agency actions, including its success rate in meeting the aspirational timeline for the completion of environmental justice assessments.

(3) Each covered agency must file a notice with the office of financial management of significant agency actions for which the agency is initiating an environmental justice assessment under section 14 of this act. The office of financial management must prepare a list of all filings received from covered agencies each week and must post the list on its website and make it available to any interested parties. The list of filings must include a brief description of the significant agency action and the methods for providing public comment for agency consideration as part of the environmental justice assessment.

NEW SECTION. Sec. 18. TRIBAL CONSULTATION. (1) Covered agencies must offer consultation with federally recognized Indian tribes on decisions that affect federally recognized Indian tribes' rights and interests in their tribal lands. The consultation must occur in accordance with chapter 43.376 RCW and must be independent of any public participation process required by state law, or by a state agency, and regardless of whether the agency receives a request for consultation from an Indian tribe. A covered agency's collaboration should include protocols for communication and development of best practices in consultation.

(2) Nothing in this chapter is intended to direct, authorize, or encourage covered agencies to collect, maintain, or provide data related to sacred sites, traditional cultural properties, burial grounds, and other tribal sites protected by federal or state law.

NEW SECTION. Sec. 19. A new section is added to chapter 43.70 RCW to read as follows:

ENVIRONMENTAL HEALTH DISPARITIES MAP.

(1) In consultation with the environmental justice council established in section 20 of this act, the department must continue to develop and maintain an environmental health disparities map with the most current available information necessary to identify cumulative environmental health impacts and overburdened communities. The department may also consult with other interested partners, such as the University of Washington department of environmental and occupational health sciences, other academic partners, members of overburdened communities and vulnerable populations, and other agencies. The environmental health disparities map must include tools to:

(a) Track changes in environmental health disparities over time in an interactive, regularly updated display; and

(b) Measure the link between overall environmental health disparity map ranks, environmental data, vulnerable populations characteristics, such as race and income, and human health data.

(2) In further developing and maintaining the environmental health disparities map, the department must:

(a) Solicit feedback from representatives from overburdened communities and vulnerable populations through community engagement and listening sessions in all regions of the state and provide opportunities for public comment; and

(b) Request assistance from:

(i) State universities;

(ii) Other academic researchers, such as the Washington state institute for public policy, to perform modeling and create evidence-based indicators and to conduct sensitivity analyses to assess the impact of new indicators on communities and determinations of overburdened communities; and

(iii) Other state agencies to provide applicable statewide environmental and sampling data for air, water, soil, polluted sites, toxic waste, pesticides, toxic chemicals, and other applicable media.

(3) The department must:

(a) Document and publish a summary of the regular updates and revisions to the

environmental health disparities map that happen over time as the new data becomes available, in order to help the public understand different versions of the map as they are published;

(b) At least every three years, perform a comprehensive evaluation of the map to ensure that the most current modeling and methods available to evaluate cumulative environmental health impacts are being used to develop and update the environmental health disparities map's indicators;

(c) Develop technical guidance for agencies that includes an online training video detailing a description of how to use the environmental health disparities map's features, access source data, and explanation of map and indicator limitations; and

(d) Provide support and consultation to agencies on the use of the environmental health disparities map by Washington tracking network staff.

(4) (a) By July 1, 2022, the Washington state institute for public policy must conduct a technical review of the measures and methods used in the environmental health disparities map. The review must, to the extent possible, address the following:

(i) Identify how the measures used in the map compare to measures used in other similar tools that aim to identify communities that are disproportionately impacted as a result of environmental justice issues;

(ii) Compare characteristics such as the reliability, validity, and clinical importance of individual and composite measures included in the map and other similar tools; and

(iii) Compare methodologies used in the map to statistical methodologies used in other similar tools.

(b) The department of health and the University of Washington must provide technical documentation regarding current methods to the Washington state institute for public policy and must consult with the institute as needed to ensure that the institute has adequate information to complete the technical review.

(c) By November 1, 2022, the Washington state institute for public policy must complete the review and submit a report on their findings to the

office of the governor, the appropriate committees of the legislature, and the environmental justice council.

NEW SECTION. **Sec. 20.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The environmental justice council is established to advise covered agencies on incorporating environmental justice into agency activities.

(2) The council consists of 14 members appointed by the governor. The councilmembers must be persons who are well-informed regarding and committed to the principles of environmental justice and who, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state. The members of the council shall elect two members to serve as cochairs for two-year terms. The council must include:

(a) Seven community representatives, including one youth representative, the nominations of which are based upon applied and demonstrated work and focus on environmental justice or a related field, such as racial or economic justice, and accountability to vulnerable populations and overburdened communities;

(i) The youth representative must be between the ages of 18 and 25 at the time of appointment;

(ii) The youth representative serves a two-year term. All other community representatives serve four-year terms, with six representatives initially being appointed to four-year terms and five being initially appointed to two-year terms, after which they will be appointed to four-year terms;

(b) Two members representing tribal communities, one from eastern Washington and one from western Washington, appointed by the governor. The governor shall solicit and consider nominees from each of the federally recognized tribes in Washington state. The governor shall collaborate with federally recognized tribes on the selection of tribal representatives. The tribal representatives serve four-year terms. One representative must be initially appointed for a four-year term. The other representative must be initially appointed for a two-year term, after which, that representative must be appointed for a four-year term;

(c) Two representatives who are environmental justice practitioners or academics to serve as environmental justice experts, the nominations of which are based upon applied and demonstrated work and focus on environmental justice;

(d) (i) One representative of a business that is regulated by a covered agency and whose ordinary business conditions are significantly affected by the actions of at least one other covered agency; and

(ii) One representative who is a member or officer of a union representing workers in the building and construction trades; and

(e) One representative at large, the nomination of which is based upon applied and demonstrated work and focus on environmental justice.

(3) Covered agencies shall serve as nonvoting, ex officio liaisons to the council. Each covered agency must identify an executive team level staff person to participate on behalf of the agency.

(4) Nongovernmental members of the council must be compensated and reimbursed in accordance with RCW 43.03.050, 43.03.060, and 43.03.220.

(5) The department of health must:

(a) Hire a manager who is responsible for overseeing all staffing and administrative duties in support of the council; and

(b) Provide all administrative and staff support for the council.

(6) In collaboration with the office of equity, the office of financial management, the council, and covered agencies, the department of health must:

(a) Establish standards for the collection, analysis, and reporting of disaggregated data as it pertains to tracking population level outcomes of communities;

(b) Create statewide and agency-specific process and outcome measures to show performance:

(i) Using outcome-based methodology to determine the effectiveness of agency programs and services on reducing environmental disparities; and

(ii) Taking into consideration community feedback from the council on

whether the performance measures established accurately measure the effectiveness of covered agency programs and services in the communities served; and

(c) Create an online performance dashboard to publish performance measures and outcomes as referenced in section 17 of this act for the state and each covered agency.

(7) The department of health must coordinate with the consolidated technology services agency to address cybersecurity and data protection for all data collected by the department.

(8) (a) With input and assistance from the council, the department of health must establish an interagency work group to assist covered agencies in incorporating environmental justice into agency decision making. The work group must include staff from each covered agency directed to implement environmental justice provisions under this chapter and may include members from the council. The department of health shall provide assistance to the interagency work group by:

(i) Facilitating information sharing among covered agencies on environmental justice issues and between agencies and the council;

(ii) Developing and providing assessment tools for covered agencies to use in the development and evaluation of agency programs, services, policies, and budgets;

(iii) Providing technical assistance and compiling and creating resources for covered agencies to use; and

(iv) Training covered agency staff on effectively using data and tools for environmental justice assessments.

(b) The duties of the interagency work group include:

(i) Providing technical assistance to support agency compliance with the implementation of environmental justice into their strategic plans, environmental justice obligations for budgeting and funding criteria and decisions, environmental justice assessments, and community engagement plans;

(ii) Assisting the council in developing a suggested schedule and timeline for sequencing the types of: (A)

Funding and expenditure decisions subject to rules; and (B) criteria incorporating environmental justice principles;

(iii) Identifying other policies, priorities, and projects for the council's review and guidance development;

(iv) Identifying goals and metrics that the council may use to assess agency performance in meeting the requirements of this act for purposes of communicating progress to the public, the governor, and the legislature; and

(v) Developing the guidance under subsection (9)(c) of this section in coordination with the council.

(9) The council has the following powers and duties:

(a) To provide a forum for the public to:

(i) Provide written or oral testimony on their environmental justice concerns;

(ii) Assist the council in understanding environmental justice priorities across the state in order to develop council recommendations to agencies for issues to prioritize; and

(iii) Identify which agencies to contact with their specific environmental justice concerns and questions;

(b)(i) The council shall work in an iterative fashion with the interagency work group to develop guidance for environmental justice implementation into covered agency strategic plans pursuant to section 12 of this act, environmental justice assessments pursuant to section 14 of this act, budgeting and funding criteria for making budgeting and funding decisions pursuant to section 16 of this act, and community engagement plans pursuant to section 13 of this act;

(ii) The council and interagency work group shall regularly update its guidance;

(c) In consultation with the interagency work group, the council:

(i) Shall provide guidance to covered agencies on developing environmental justice assessments pursuant to section 14 of this act for significant agency actions;

(ii) Shall make recommendations to covered agencies on which agency actions may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population and therefore should be considered significant agency actions that require an environmental justice assessment under section 14 of this act;

(iii) Shall make recommendations to covered agencies on the identification and prioritization of overburdened communities under this chapter, and related to the use by covered agencies of the environmental and health disparities map in agency efforts to identify and prioritize overburdened communities;

(iv) May make recommendations to a covered agency on the timing and sequencing of a covered agencies' efforts to implement sections 12 through 16 of this act; and

(v) May make recommendations to the governor and the legislature regarding ways to improve agency compliance with the requirements of this chapter;

(d) By December 1, 2023, and biennially thereafter, and with consideration of the information shared on September 1st each year in covered agencies' annual updates to the council required under section 17 of this act the council must:

(i) Evaluate progress of each agency in applying council guidance, and update guidance as needed; and

(ii) Communicate each covered agency's progress to the public, the governor, and the legislature. This communication is not required to be a report and may take the form of a presentation or other format that communicates the progress of the state and its agencies in meeting the state's environmental justice goals in compliance with this act, and summarizing the work of the council pursuant to (a) through (d) of this subsection, and subsection (11) of this section.

(10) By November 30, 2022, and in compliance with RCW 43.01.036, the council must submit a report to the governor and the appropriate committees of the house of representatives and the senate on:

(a) The council's recommendations to covered agencies on the identification of significant agency actions requiring an

environmental justice assessment under subsection (9)(c)(ii) of this section;

(b) The summary of covered agency progress reports provided to the council under section 17(1) of this act, including the status of agency plans for performing environmental justice assessments required by section 14 of this act; and

(c) Guidance for environmental justice implementation into covered agency strategic plans, environmental justice assessments, budgeting and funding criteria, and community engagement plans under subsection (9)(c)(i) of this section.

(11) The council may:

(a) Review incorporation of environmental justice implementation plans into covered agency strategic plans pursuant to section 12 of this act, environmental justice assessments pursuant to section 14 of this act, budgeting and funding criteria for making budgeting and funding decisions pursuant to section 16 of this act, and community engagement plans pursuant to section 13 of this act;

(b) Make recommendations for amendments to this chapter or other legislation to promote and achieve the environmental justice goals of the state;

(c) Review existing laws and make recommendations for amendments that will further environmental justice;

(d) Recommend to specific agencies that they create environmental justice-focused, agency-requested legislation; and

(e) Recommend funding strategies and allocations to build capacity in vulnerable populations and overburdened communities to address environmental justice.

(12) The role of the council is purely advisory and council decisions are not binding on an agency, individual, or organization.

(13) The department of health must convene the first meeting of the council by January 1, 2022.

(14) All council meetings are subject to the open public meetings requirements of chapter 42.30 RCW and a public comment period must be provided at every meeting of the council.

NEW SECTION. **Sec. 21.** LEGAL OBLIGATIONS. (1) Nothing in this act prevents state agencies that are not covered agencies from adopting environmental justice policies and processes consistent with this act.

(2) The head of a covered agency may, on a case-by-case basis, exempt a significant agency action or decision process from the requirements of sections 14 and 16 of this act upon determining that:

(a) Any delay in the significant agency action poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;

(b) An assessment would delay a significant agency decision concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(c) The requirements of sections 14 and 16 of this act are in conflict with:

(i) Federal law or federal program requirements;

(ii) The requirements for eligibility of employers in this state for federal unemployment tax credits; or

(iii) Constitutional limitations or fiduciary obligations, including those applicable to the management of state lands and state forestlands as defined in RCW 79.02.010.

NEW SECTION. **Sec. 22.** APPEALS. (1) Agency actions, as defined in chapter 34.05 RCW, that are subject to or result from the requirements of this chapter may be appealed as provided in chapter 34.05 RCW.

(2) Appeals of significant agency actions under this chapter must be of the environmental justice assessment together with the accompanying agency action, as defined in RCW 34.05.010, for all environmental justice assessments for which there is an associated agency action that is appealable under chapter 34.05 RCW.

(3) Nothing in this act may be construed to create a new private right of action, other than as provided in the appeal process set forth in chapter 34.05 RCW, on the part of any individual,

entity, or agency against any state agency.

(4) Nothing in this act may be construed to expand, contract, or otherwise modify any rights of appeal, or procedures for appeal, under other laws other than the availability of the appeal process described in this section.

Sec. 23. RCW 43.376.020 and 2012 c 122 s 2 are each amended to read as follows:

In establishing a government-to-government relationship with Indian tribes, state agencies must:

(1) Make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian tribes and develop a consultation process that is used by the agency for issues involving specific Indian tribes. Covered agencies, as defined in section 2 of this act, subject to the requirements of chapter 70A.---RCW (the new chapter created in section 24 of this act), must offer consultation with Indian tribes on decisions that affect Indian tribes' rights and interests in their tribal lands, as required in section 18 of this act;

(2) Designate a tribal liaison who reports directly to the head of the state agency;

(3) Ensure that tribal liaisons who interact with Indian tribes and the executive directors of state agencies receive training as described in RCW 43.376.040; and

(4) Submit an annual report to the governor on activities of the state agency involving Indian tribes and on implementation of this chapter.

NEW SECTION. Sec. 24. Sections 1 through 3, 11 through 18, and 20 through 22 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. Sec. 25. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 26. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the

conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Caldier; Harris and Steele.

MINORITY recommendation: Do not pass. Signed by Representatives MacEwen, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Hoff; Jacobsen; Rude and Schmick.

Referred to Committee on Rules for second reading.

March 31, 2021

SSB 5151 Prime Sponsor, Committee on Ways & Means: Concerning foster care and child care licensing by the department of children, youth, and families. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Children, Youth & Families.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 13.34.030 and 2020 c 312 s 114 are each amended to read as follows:

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

(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," "juvenile," and "youth" mean:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(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) "Department" means the department of children, youth, and families.

(5) "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.

(6) "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;

(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; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual

disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary of the department of social and health services to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in RCW 13.34.046.

(9) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(10) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(11) "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.

(12) "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.

(13) "Guardianship" means a guardianship pursuant to chapter 13.36 RCW or a limited guardianship of a minor pursuant to RCW 11.130.215 or equivalent laws of another state or a federally recognized Indian tribe.

(14) "Housing assistance" means appropriate referrals by the department or other agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or family reunification service as described in RCW 13.34.025(2).

(15) "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, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, 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.

(16) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(17) "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.

(18) "Parent" means the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26A.100, unless the legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian tribe.

(19) "Prevention and family services and programs" means specific mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs that qualify for federal funding under the federal family first prevention services act, P.L. 115-123. For purposes of this chapter, prevention and family services and programs are not remedial services or family reunification services as described in RCW 13.34.025(2).

(20) "Prevention services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child. Prevention services include, but are not limited to, prevention and family services and programs as defined in this section.

(21) "Qualified residential treatment program" means a program that meets the requirements provided in RCW 13.34.420, qualifies for funding under the family first prevention services act under 42 U.S.C. Sec. 672(k), and, if located within Washington state, is licensed as a group care facility under chapter 74.15 RCW (~~that also qualifies for funding under the federal family first prevention services act under 42 U.S.C. Sec. 672(k) and meets the requirements provided in RCW 13.34.420~~).

(22) "Relative" includes persons related to a child in the following ways:

(a) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(b) Stepfather, stepmother, stepbrother, and stepsister;

(c) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted

children of such persons, and other relatives of the adoptive parents in accordance with state law;

(d) Spouses of any persons named in (a), (b), or (c) of this subsection, even after the marriage is terminated;

(e) Relatives, as named in (a), (b), (c), or (d) of this subsection, of any half sibling of the child; or

(f) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(23) "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.

(24) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(25) "Social study" means a written evaluation of matters relevant to the disposition of the case that contains the information required by RCW 13.34.430.

(26) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the department or the court.

(27) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

Sec. 2. RCW 43.216.010 and 2020 c 270 s 11 are each reenacted and amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Outdoor nature-based child care" means an agency or an agency-offered program that:

(i) Enrolls preschool or school-age children;

(ii) Provides early learning services to the enrolled children in an outdoor natural space approved by the department for not less than four hours per day or fifty percent of the daily program hours, whichever is less; and

(iii) Teaches a nature-based curriculum to enrolled children;

(f) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a) (i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, and accept only school age children;

(g) Seasonal camps (~~(of three months' or less duration engaged primarily in recreational or educational activities)~~). For purposes of this chapter, "seasonal camp" means a program that:

(i) Operates for three months or less within a period of twelve consecutive months;

(ii) Is engaged primarily in recreational or educational activities

conducted on a closely supervised basis; and

(iii) Is owned by any person, organization, association, or corporation, or is operated by a federal, state, county, or municipal government;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any entity that provides recreational or educational programming for school age children only and the entity meets all of the following requirements:

(i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;

(ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;

(iii) The entity is a local affiliate of a national nonprofit; and

(iv) The entity is in compliance with all safety and quality standards set by the associated national agency;

(j) A program operated by any unit of local, state, or federal government;

(k) A program located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(l) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(m) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Certificate of parental improvement" means a certificate issued under RCW 74.13.720 to an individual who has a founded finding of physical abuse or negligent treatment or maltreatment, or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b).

(5) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(6) "Department" means the department of children, youth, and families.

(7) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(8) "Early childhood education and assistance program contractor" means an organization that provides early childhood education and assistance program services under a signed contract with the department.

(9) "Early childhood education and assistance program provider" means an organization that provides site level, direct, and high quality early childhood education and assistance program services under the direction of an early childhood education and assistance program contractor.

(10) "Early start" means an integrated high quality continuum of early learning programs for children birth-to-five years of age. Components of early start include, but are not limited to, the following:

(a) Home visiting and parent education and support programs;

(b) The early achievers program described in RCW 43.216.085;

(c) Integrated full-day and part-day high quality early learning programs; and

(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.

(11) "Education data center" means the education data center established in RCW 43.41.400, commonly referred to as the education research and data center.

(12) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(13) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties pursuant to RCW 43.216.325(3).

(14) "Extended day program" means an early childhood education and assistance program that offers early learning education for at least ten hours per day, a minimum of two thousand hours per year, at least four days per week, and operates year-round.

(15) "Full day program" means an early childhood education and assistance program that offers early learning education for a minimum of one thousand hours per year.

(16) "Inspection report" means a written or digital record or report created by the department that identifies or describes licensing violations or conditions within an agency. An inspection report does not include a child care facility licensing compliance agreement as defined in RCW 43.216.395.

(17) "Low-income child care provider" means a person who administers a child care program that consists of at least eighty percent of children receiving working connections child care subsidy.

~~((17))~~ (18) "Low-income neighborhood" means a district or community where more than twenty percent of households are below the federal poverty level.

~~((18))~~ (19) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

~~((19))~~ (20) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

~~((20))~~ (21) "Nonschool age child" means a child who is age six years or younger and who is not enrolled in a public or private school.

~~((21))~~ (22) "Part day program" means an early childhood education and assistance program that offers early learning education for at least two and one-half hours per class session, at least three hundred twenty hours per year, for a minimum of thirty weeks per year.

~~((22))~~ (23) "Private school" means a private school approved by the state under chapter 28A.195 RCW.

~~((23))~~ (24) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((24))~~ (25) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

~~((25))~~ (26) "School age child" means a child who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

~~((26))~~ (27) "Secretary" means the secretary of the department.

~~((27))~~ (28) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program.

Sec. 3. RCW 43.216.015 and 2020 c 262 s 1 and 2020 c 90 s 9 are each reenacted and amended to read as follows:

(1)(a) The department of children, youth, and families is created as an executive branch agency. The department is vested with all powers and duties transferred to it under chapter 6, Laws of 2017 3rd sp. sess. and such other powers and duties as may be authorized by law. The vision for the department is that Washington state's children and youth grow up safe and healthy—thriving physically, emotionally, and academically, nurtured by family and community.

(b) The department, in partnership with state and local agencies, tribes, and communities, shall protect children and youth from harm and promote healthy development with effective, high quality prevention, intervention, and early education services delivered in an equitable manner. An important role for the department shall be to provide preventative services to help secure and preserve families in crisis. The department shall partner with the federally recognized Indian tribes to develop effective services for youth and families while respecting the sovereignty of those tribes and the government-to-government relationship. Nothing in chapter 6, Laws of 2017 3rd sp. sess. alters the duties, requirements, and policies of the federal Indian child welfare act, 25 U.S.C. Secs. 1901 through 1963, as amended, or the Indian child welfare act, chapter 13.38 RCW.

(2) Beginning July 1, 2018, the department must develop definitions for, work plans to address, and metrics to measure the outcomes for children, youth, and families served by the department and must work with state agencies to ensure services for children, youth, and families are science-based, outcome-driven, data-informed, and collaborative.

(3)(a) Beginning July 1, 2018, the department must establish short and long-term population level outcome measure goals, including metrics regarding reducing disparities by family income, race, and ethnicity in each outcome.

(b) In addition to transparent, frequent reporting of the outcome measures in (c)(i) through (viii) of this subsection, the department must report to

the legislature an examination of engagement, resource utilization, and outcomes for clients receiving department services and youth participating in juvenile court alternative programs funded by the department, no less than annually and beginning September 1, 2020. The data in this report must be disaggregated by race, ethnicity, and geography. This report must identify areas of focus to advance equity that will inform department strategies so that all children, youth, and families are thriving. Metrics detailing progress towards eliminating disparities and disproportionality over time must also be included. The report must also include information on department outcome measures, actions taken, progress toward these goals, and plans for the future year.

(c) The outcome measures must include, but are not limited to:

(i) Improving child development and school readiness through voluntary, high quality early learning opportunities as measured by: (A) Increasing the number and proportion of children kindergarten-ready as measured by the Washington kindergarten inventory of developing skills (WAKids) assessment including mathematics; (B) increasing the proportion of children in early learning programs that have achieved the level 3 or higher early achievers quality standard; and (C) increasing the available supply of licensed child care in ~~(both)~~ child care centers, outdoor nature-based child care, and family homes, including providers not receiving state subsidy;

(ii) Preventing child abuse and neglect;

(iii) Improving child and youth safety, permanency, and well-being as measured by: (A) Reducing the number of children entering out-of-home care; (B) reducing a child's length of stay in out-of-home care; (C) reducing maltreatment of youth while in out-of-home care; (D) licensing more foster homes than there are children in foster care; (E) reducing the number of children that reenter out-of-home care within twelve months; (F) increasing the stability of placements for children in out-of-home care; and (G) developing strategies to demonstrate to foster families that their service and involvement is highly valued by the department, as demonstrated by the

development of strategies to consult with foster families regarding future placement of a foster child currently placed with a foster family;

(iv) Improving reconciliation of children and youth with their families as measured by: (A) Increasing family reunification; and (B) increasing the number of youth who are reunified with their family of origin;

(v) In collaboration with county juvenile justice programs, improving adolescent outcomes including reducing multisystem involvement and homelessness; and increasing school graduation rates and successful transitions to adulthood for youth involved in the child welfare and juvenile justice systems;

(vi) Reducing future demand for mental health and substance use disorder treatment for youth involved in the child welfare and juvenile justice systems;

(vii) In collaboration with county juvenile justice programs, reducing criminal justice involvement and recidivism as measured by: (A) An increase in the number of youth who successfully complete the terms of diversion or alternative sentencing options; (B) a decrease in the number of youth who commit subsequent crimes; and (C) eliminating the discharge of youth from institutional settings into homelessness; and

(viii) Eliminating racial and ethnic disproportionality and disparities in system involvement and across child and youth outcomes in collaboration with other state agencies.

(4) Beginning July 1, 2018, the department must:

(a) Lead ongoing collaborative work to minimize or eliminate systemic barriers to effective, integrated services in collaboration with state agencies serving children, youth, and families;

(b) Identify necessary improvements and updates to statutes relevant to their responsibilities and proposing legislative changes to the governor no less than biennially;

(c) Help create a data-focused environment in which there are aligned outcomes and shared accountability for achieving those outcomes, with shared, real-time data that is accessible to authorized persons interacting with the

family, child, or youth to identify what is needed and which services would be effective;

(d) Lead the provision of state services to adolescents, focusing on key transition points for youth, including exiting foster care and institutions, and coordinating with the office of homeless youth prevention and protection programs to address the unique needs of homeless youth; and

(e) Create and annually update a list of the rights and responsibilities of foster parents in partnership with foster parent representatives. The list of foster parent rights and responsibilities must be posted on the department's web site, provided to individuals participating in a foster parent orientation before licensure, provided to foster parents in writing at the time of licensure, and provided to foster parents applying for license renewal.

(5) The department is accountable to the public. To ensure transparency, beginning December 30, 2018, agency performance data for the services provided by the department, including outcome data for contracted services, must be available to the public, consistent with confidentiality laws, federal protections, and individual rights to privacy. Publicly available data must include budget and funding decisions, performance-based contracting data, including data for contracted services, and performance data on metrics identified in this section. The board must work with the secretary and director to develop the most effective and cost-efficient ways to make department data available to the public, including making this data readily available on the department's web site.

(6) Except as provided in section 8, chapter 90, Laws of 2020, the department shall ensure that all new and renewed contracts for services are performance-based.

(7) The department must execute all new and renewed contracts for services in accordance with this section and consistent with RCW 74.13B.020. When contracted services are managed through a network administrator or other third party, the department must execute data-sharing agreements with the entities managing the contracts to track provider performance measures. Contracts with

network administrators or other third parties must provide the contract administrator the ability to shift resources from one provider to another, to evaluate individual provider performance, to add or delete services in consultation with the department, and to reinvest savings from increased efficiencies into new or improved services in their catchment area. Whenever possible, contractor performance data must be made available to the public, consistent with confidentiality laws and individual rights to privacy.

(8) (a) The board shall begin its work and call the first meeting of the board on or after July 1, 2018. The board shall immediately assume the duties of the legislative children's oversight committee, as provided for in RCW 74.13.570 and assume the full functions of the board as provided for in this section by July 1, 2019. The office of innovation, alignment, and accountability shall provide quarterly updates regarding the implementation of the department to the board between July 1, 2018, and July 1, 2019.

(b) The office of the family and children's ombuds shall establish the board. The board is authorized for the purpose of monitoring and ensuring that the department achieves the stated outcomes of chapter 6, Laws of 2017 3rd sp. sess., and complies with administrative acts, relevant statutes, rules, and policies pertaining to early learning, juvenile rehabilitation, juvenile justice, and children and family services.

(9) (a) The board shall consist of the following members:

(i) Two senators and two representatives from the legislature with one member from each major caucus;

(ii) One nonvoting representative from the governor's office;

(iii) One subject matter expert in early learning;

(iv) One subject matter expert in child welfare;

(v) One subject matter expert in juvenile rehabilitation and justice;

(vi) One subject matter expert in eliminating disparities in child outcomes by family income and race and ethnicity;

(vii) One tribal representative from west of the crest of the Cascade mountains;

(viii) One tribal representative from east of the crest of the Cascade mountains;

(ix) One current or former foster parent representative;

(x) One representative of an organization that advocates for the best interest of the child;

(xi) One parent stakeholder group representative;

(xii) One law enforcement representative;

(xiii) One child welfare caseworker representative;

(xiv) One early childhood learning program implementation practitioner;

(xv) One current or former foster youth under age twenty-five;

(xvi) One individual under age twenty-five with current or previous experience with the juvenile justice system;

(xvii) One physician with experience working with children or youth; and

(xviii) One judicial representative presiding over child welfare court proceedings or other children's matters.

(b) The senate members of the board shall be appointed by the leaders of the two major caucuses of the senate. The house of representatives members of the board shall be appointed by the leaders of the two major caucuses of the house of representatives. Members shall be appointed before the close of each regular session of the legislature during an odd-numbered year.

(c) The remaining board members shall be nominated by the governor, subject to the approval of the appointed legislators by majority vote, and serve four-year terms. When nominating and approving members after July 28, 2019, the governor and appointed legislators must ensure that at least five of the board members reside east of the crest of the Cascade mountains.

(10) The board has the following powers, which may be exercised by majority vote of the board:

(a) To receive reports of the office of the family and children's ombuds;

(b) To obtain access to all relevant records in the possession of the office of the family and children's ombuds, except as prohibited by law;

(c) To select its officers and adoption of rules for orderly procedure;

(d) To request investigations by the office of the family and children's ombuds of administrative acts;

(e) To request and receive information, outcome data, documents, materials, and records from the department relating to children and family welfare, juvenile rehabilitation, juvenile justice, and early learning;

(f) To determine whether the department is achieving the performance measures;

(g) If final review is requested by a licensee, to review whether department licensors appropriately and consistently applied agency rules in (~~child care facility licensing compliance agreements as defined in RCW 43.216.395~~) inspection reports that do not involve a violation of health and safety standards as defined in RCW 43.216.395 in cases that have already been reviewed by the internal review process described in RCW 43.216.395 with the authority to overturn, change, or uphold such decisions;

(h) To conduct annual reviews of a sample of department contracts for services from a variety of program and service areas to ensure that those contracts are performance-based and to assess the measures included in each contract; and

(i) Upon receipt of records or data from the office of the family and children's ombuds or the department, the board is subject to the same confidentiality restrictions as the office of the family and children's ombuds is under RCW 43.06A.050. The provisions of RCW 43.06A.060 also apply to the board.

(11) The board has general oversight over the performance and policies of the department and shall provide advice and input to the department and the governor.

(12) The board must no less than twice per year convene stakeholder meetings to allow feedback to the board regarding contracting with the department, departmental use of local, state, private, and federal funds, and other

matters as relating to carrying out the duties of the department.

(13) The board shall review existing surveys of providers, customers, parent groups, and external services to assess whether the department is effectively delivering services, and shall conduct additional surveys as needed to assess whether the department is effectively delivering services.

(14) The board is subject to the open public meetings act, chapter 42.30 RCW, except to the extent disclosure of records or information is otherwise confidential under state or federal law.

(15) Records or information received by the board is confidential to the extent permitted by state or federal law. This subsection does not create an exception for records covered by RCW 13.50.100.

(16) The board members shall receive no compensation for their service on the board, but shall be reimbursed for travel expenses incurred while conducting business of the board when authorized by the board and within resources allocated for this purpose, except appointed legislators who shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(17) The board shall select, by majority vote, an executive director who shall be the chief administrative officer of the board and shall be responsible for carrying out the policies adopted by the board. The executive director is exempt from the provisions of the state civil service law, chapter 41.06 RCW, and shall serve at the pleasure of the board established in this section.

(18) The board shall maintain a staff not to exceed one full-time equivalent employee. The board-selected executive director of the board is responsible for coordinating staff appointments.

(19) The board shall issue an annual report to the governor and legislature by December 1st of each year with an initial report delivered by December 1, 2019. The report must review the department's progress towards meeting stated performance measures and desired performance outcomes, and must also include a review of the department's strategic plan, policies, and rules.

(20) The definitions in this subsection apply throughout this section

unless the context clearly requires otherwise.

(a) "Board" means the oversight board for children, youth, and families established in subsection (8) of this section.

(b) "Director" means the director of the office of innovation, alignment, and accountability.

(c) "Performance-based contract" means results-oriented contracting that focuses on the quality or outcomes that tie at least a portion of the contractor's payment, contract extensions, or contract renewals to the achievement of specific measurable performance standards and requirements.

Sec. 4. RCW 43.216.015 and 2020 c 262 s 1 are each amended to read as follows:

(1)(a) The department of children, youth, and families is created as an executive branch agency. The department is vested with all powers and duties transferred to it under chapter 6, Laws of 2017 3rd sp. sess. and such other powers and duties as may be authorized by law. The vision for the department is that Washington state's children and youth grow up safe and healthy—thriving physically, emotionally, and academically, nurtured by family and community.

(b) The department, in partnership with state and local agencies, tribes, and communities, shall protect children and youth from harm and promote healthy development with effective, high quality prevention, intervention, and early education services delivered in an equitable manner. An important role for the department shall be to provide preventative services to help secure and preserve families in crisis. The department shall partner with the federally recognized Indian tribes to develop effective services for youth and families while respecting the sovereignty of those tribes and the government-to-government relationship. Nothing in chapter 6, Laws of 2017 3rd sp. sess. alters the duties, requirements, and policies of the federal Indian child welfare act, 25 U.S.C. Secs. 1901 through 1963, as amended, or the Indian child welfare act, chapter 13.38 RCW.

(2) Beginning July 1, 2018, the department must develop definitions for, work plans to address, and metrics to

measure the outcomes for children, youth, and families served by the department and must work with state agencies to ensure services for children, youth, and families are science-based, outcome-driven, data-informed, and collaborative.

(3)(a) Beginning July 1, 2018, the department must establish short and long-term population level outcome measure goals, including metrics regarding reducing disparities by family income, race, and ethnicity in each outcome.

(b) In addition to transparent, frequent reporting of the outcome measures in (c)(i) through (viii) of this subsection, the department must report to the legislature an examination of engagement, resource utilization, and outcomes for clients receiving department services and youth participating in juvenile court alternative programs funded by the department, no less than annually and beginning September 1, 2020. The data in this report must be disaggregated by race, ethnicity, and geography. This report must identify areas of focus to advance equity that will inform department strategies so that all children, youth, and families are thriving. Metrics detailing progress towards eliminating disparities and disproportionality over time must also be included. The report must also include information on department outcome measures, actions taken, progress toward these goals, and plans for the future year.

(c) The outcome measures must include, but are not limited to:

(i) Improving child development and school readiness through voluntary, high quality early learning opportunities as measured by: (A) Increasing the number and proportion of children kindergarten-ready as measured by the Washington kindergarten inventory of developing skills (WAKids) assessment including mathematics; (B) increasing the proportion of children in early learning programs that have achieved the level 3 or higher early achievers quality standard; and (C) increasing the available supply of licensed child care in ~~((both))~~ child care centers, outdoor nature-based child care, and family homes, including providers not receiving state subsidy;

(ii) Preventing child abuse and neglect;

(iii) Improving child and youth safety, permanency, and well-being as measured by: (A) Reducing the number of children entering out-of-home care; (B) reducing a child's length of stay in out-of-home care; (C) reducing maltreatment of youth while in out-of-home care; (D) licensing more foster homes than there are children in foster care; (E) reducing the number of children that reenter out-of-home care within twelve months; (F) increasing the stability of placements for children in out-of-home care; and (G) developing strategies to demonstrate to foster families that their service and involvement is highly valued by the department, as demonstrated by the development of strategies to consult with foster families regarding future placement of a foster child currently placed with a foster family;

(iv) Improving reconciliation of children and youth with their families as measured by: (A) Increasing family reunification; and (B) increasing the number of youth who are reunified with their family of origin;

(v) In collaboration with county juvenile justice programs, improving adolescent outcomes including reducing multisystem involvement and homelessness; and increasing school graduation rates and successful transitions to adulthood for youth involved in the child welfare and juvenile justice systems;

(vi) Reducing future demand for mental health and substance use disorder treatment for youth involved in the child welfare and juvenile justice systems;

(vii) In collaboration with county juvenile justice programs, reducing criminal justice involvement and recidivism as measured by: (A) An increase in the number of youth who successfully complete the terms of diversion or alternative sentencing options; (B) a decrease in the number of youth who commit subsequent crimes; and (C) eliminating the discharge of youth from institutional settings into homelessness; and

(viii) Eliminating racial and ethnic disproportionality and disparities in system involvement and across child and youth outcomes in collaboration with other state agencies.

(4) Beginning July 1, 2018, the department must:

(a) Lead ongoing collaborative work to minimize or eliminate systemic barriers to effective, integrated services in collaboration with state agencies serving children, youth, and families;

(b) Identify necessary improvements and updates to statutes relevant to their responsibilities and proposing legislative changes to the governor no less than biennially;

(c) Help create a data-focused environment in which there are aligned outcomes and shared accountability for achieving those outcomes, with shared, real-time data that is accessible to authorized persons interacting with the family, child, or youth to identify what is needed and which services would be effective;

(d) Lead the provision of state services to adolescents, focusing on key transition points for youth, including exiting foster care and institutions, and coordinating with the office of homeless youth prevention and protection programs to address the unique needs of homeless youth; and

(e) Create and annually update a list of the rights and responsibilities of foster parents in partnership with foster parent representatives. The list of foster parent rights and responsibilities must be posted on the department's web site, provided to individuals participating in a foster parent orientation before licensure, provided to foster parents in writing at the time of licensure, and provided to foster parents applying for license renewal.

(5) The department is accountable to the public. To ensure transparency, beginning December 30, 2018, agency performance data for the services provided by the department, including outcome data for contracted services, must be available to the public, consistent with confidentiality laws, federal protections, and individual rights to privacy. Publicly available data must include budget and funding decisions, performance-based contracting data, including data for contracted services, and performance data on metrics identified in this section. The board must work with the secretary and director to develop the most effective and cost-efficient ways to make department data

available to the public, including making this data readily available on the department's web site.

(6) The department shall ensure that all new and renewed contracts for services are performance-based.

(7) The department must execute all new and renewed contracts for services in accordance with this section and consistent with RCW 74.13B.020. When contracted services are managed through a network administrator or other third party, the department must execute data-sharing agreements with the entities managing the contracts to track provider performance measures. Contracts with network administrators or other third parties must provide the contract administrator the ability to shift resources from one provider to another, to evaluate individual provider performance, to add or delete services in consultation with the department, and to reinvest savings from increased efficiencies into new or improved services in their catchment area. Whenever possible, contractor performance data must be made available to the public, consistent with confidentiality laws and individual rights to privacy.

(8)(a) The board shall begin its work and call the first meeting of the board on or after July 1, 2018. The board shall immediately assume the duties of the legislative children's oversight committee, as provided for in RCW 74.13.570 and assume the full functions of the board as provided for in this section by July 1, 2019. The office of innovation, alignment, and accountability shall provide quarterly updates regarding the implementation of the department to the board between July 1, 2018, and July 1, 2019.

(b) The office of the family and children's ombuds shall establish the board. The board is authorized for the purpose of monitoring and ensuring that the department achieves the stated outcomes of chapter 6, Laws of 2017 3rd sp. sess., and complies with administrative acts, relevant statutes, rules, and policies pertaining to early learning, juvenile rehabilitation, juvenile justice, and children and family services.

(9)(a) The board shall consist of the following members:

(i) Two senators and two representatives from the legislature with one member from each major caucus;

(ii) One nonvoting representative from the governor's office;

(iii) One subject matter expert in early learning;

(iv) One subject matter expert in child welfare;

(v) One subject matter expert in juvenile rehabilitation and justice;

(vi) One subject matter expert in eliminating disparities in child outcomes by family income and race and ethnicity;

(vii) One tribal representative from west of the crest of the Cascade mountains;

(viii) One tribal representative from east of the crest of the Cascade mountains;

(ix) One current or former foster parent representative;

(x) One representative of an organization that advocates for the best interest of the child;

(xi) One parent stakeholder group representative;

(xii) One law enforcement representative;

(xiii) One child welfare caseworker representative;

(xiv) One early childhood learning program implementation practitioner;

(xv) One current or former foster youth under age twenty-five;

(xvi) One individual under age twenty-five with current or previous experience with the juvenile justice system;

(xvii) One physician with experience working with children or youth; and

(xviii) One judicial representative presiding over child welfare court proceedings or other children's matters.

(b) The senate members of the board shall be appointed by the leaders of the two major caucuses of the senate. The house of representatives members of the board shall be appointed by the leaders of the two major caucuses of the house of representatives. Members shall be appointed before the close of each

regular session of the legislature during an odd-numbered year.

(c) The remaining board members shall be nominated by the governor, subject to the approval of the appointed legislators by majority vote, and serve four-year terms. When nominating and approving members after July 28, 2019, the governor and appointed legislators must ensure that at least five of the board members reside east of the crest of the Cascade mountains.

(10) The board has the following powers, which may be exercised by majority vote of the board:

(a) To receive reports of the office of the family and children's ombuds;

(b) To obtain access to all relevant records in the possession of the office of the family and children's ombuds, except as prohibited by law;

(c) To select its officers and adoption of rules for orderly procedure;

(d) To request investigations by the office of the family and children's ombuds of administrative acts;

(e) To request and receive information, outcome data, documents, materials, and records from the department relating to children and family welfare, juvenile rehabilitation, juvenile justice, and early learning;

(f) To determine whether the department is achieving the performance measures;

(g) If final review is requested by a licensee, to review whether department licensors appropriately and consistently applied agency rules in (~~child care facility licensing compliance agreements as defined in RCW 43.216.395~~) inspection reports that do not involve a violation of health and safety standards as defined in RCW 43.216.395 in cases that have already been reviewed by the internal review process described in RCW 43.216.395 with the authority to overturn, change, or uphold such decisions;

(h) To conduct annual reviews of a sample of department contracts for services from a variety of program and service areas to ensure that those contracts are performance-based and to assess the measures included in each contract; and

(i) Upon receipt of records or data from the office of the family and children's ombuds or the department, the board is subject to the same confidentiality restrictions as the office of the family and children's ombuds is under RCW 43.06A.050. The provisions of RCW 43.06A.060 also apply to the board.

(11) The board has general oversight over the performance and policies of the department and shall provide advice and input to the department and the governor.

(12) The board must no less than twice per year convene stakeholder meetings to allow feedback to the board regarding contracting with the department, departmental use of local, state, private, and federal funds, and other matters as relating to carrying out the duties of the department.

(13) The board shall review existing surveys of providers, customers, parent groups, and external services to assess whether the department is effectively delivering services, and shall conduct additional surveys as needed to assess whether the department is effectively delivering services.

(14) The board is subject to the open public meetings act, chapter 42.30 RCW, except to the extent disclosure of records or information is otherwise confidential under state or federal law.

(15) Records or information received by the board is confidential to the extent permitted by state or federal law. This subsection does not create an exception for records covered by RCW 13.50.100.

(16) The board members shall receive no compensation for their service on the board, but shall be reimbursed for travel expenses incurred while conducting business of the board when authorized by the board and within resources allocated for this purpose, except appointed legislators who shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(17) The board shall select, by majority vote, an executive director who shall be the chief administrative officer of the board and shall be responsible for carrying out the policies adopted by the board. The executive director is exempt from the provisions of the state civil service law, chapter 41.06 RCW, and shall

serve at the pleasure of the board established in this section.

(18) The board shall maintain a staff not to exceed one full-time equivalent employee. The board-selected executive director of the board is responsible for coordinating staff appointments.

(19) The board shall issue an annual report to the governor and legislature by December 1st of each year with an initial report delivered by December 1, 2019. The report must review the department's progress towards meeting stated performance measures and desired performance outcomes, and must also include a review of the department's strategic plan, policies, and rules.

(20) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the oversight board for children, youth, and families established in subsection (8) of this section.

(b) "Director" means the director of the office of innovation, alignment, and accountability.

(c) "Performance-based contract" means results-oriented contracting that focuses on the quality or outcomes that tie at least a portion of the contractor's payment, contract extensions, or contract renewals to the achievement of specific measurable performance standards and requirements.

Sec. 5. RCW 43.216.020 and 2020 c 262 s 5 and 2020 c 90 s 4 are each reenacted and amended to read as follows:

(1) The department shall implement state early learning policy and coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide such care;

(f) To apply data already collected comparing the following factors and make recommendations to the legislature in a time frame which corresponds to the child care and development fund federal reporting requirements, regarding working connections subsidy and state-funded preschool rates and compensation models that would attract and retain high quality early learning professionals:

(i) State-funded early learning subsidy rates and market rates of licensed early learning homes (~~and~~), centers, and outdoor nature-based child care;

(ii) Compensation of early learning educators in licensed centers (~~and~~), homes, and outdoor nature-based child care, and early learning teachers at state higher education institutions;

(iii) State-funded preschool program compensation rates and Washington state head start program compensation rates; and

(iv) State-funded preschool program compensation to compensation in similar comprehensive programs in other states;

(g) To administer the early support for infants and toddlers program in RCW 43.216.580, serve as the state lead agency for Part C of the federal individuals with disabilities education act (IDEA), and develop and adopt rules that establish minimum requirements for the services offered through Part C programs, including allowable allocations and expenditures for transition into Part B of the federal individuals with disabilities education act (IDEA);

(h) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so

that programs can function in an integrated fashion;

(i) To support the implementation of the nongovernmental private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(j) To work cooperatively and in coordination with the early learning council;

(k) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs;

(l) To develop and adopt rules for administration of the program of early learning established in RCW 43.216.555;

(m) To develop a comprehensive birth-to-three plan to provide education and support through a continuum of options including, but not limited to, services such as: Home visiting; quality incentives for infant and toddler child care subsidies; quality improvements for family home and center-based child care programs serving infants and toddlers; professional development; early literacy programs; and informal supports for family, friend, and neighbor caregivers; and

(n) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information and provider comments through the internet and other means.

(2) When additional funds are appropriated for the specific purpose of home visiting and parent and caregiver support, the department must reserve at least eighty percent for home visiting services to be deposited into the home visiting services account and up to twenty percent of the new funds for other parent or caregiver support.

(3) Home visiting services must include programs that serve families involved in the child welfare system.

(4) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children, and that recognizes and honors cultural and linguistic diversity. The

department shall include parents and legal guardians in the development of policies and program decisions affecting their children.

Sec. 6. RCW 43.216.085 and 2019 c 369 s 2 are each amended to read as follows:

(1) The department, in collaboration with tribal governments and community and statewide partners, shall implement a quality rating and improvement system, called the early achievers program. The early achievers program provides a foundation of quality for the early care and education system. The early achievers program is applicable to licensed or certified child care centers (~~(and homes)~~), family home child care, outdoor nature-based child care, and early learning programs such as working connections child care and early childhood education and assistance programs.

(2) The objectives of the early achievers program are to:

(a) Improve short-term and long-term educational outcomes for children as measured by assessments including, but not limited to, the Washington kindergarten inventory of developing skills in RCW 28A.655.080;

(b) Give parents clear and easily accessible information about the quality of child care and early education programs;

(c) Support improvement in early learning and child care programs throughout the state;

(d) Increase the readiness of children for school;

(e) Close the disparities in access to quality care;

(f) Provide professional development and coaching opportunities to early child care and education providers; and

(g) Establish a common set of expectations and standards that define, measure, and improve the quality of early learning and child care settings.

(3)(a) Licensed or certified child care centers (~~(and homes)~~), family home child care, and outdoor nature-based child care, serving nonschool-age children and receiving state subsidy payments, must participate in the early achievers program by the required deadlines established in RCW 43.216.135.

(b) Approved early childhood education and assistance program providers receiving state-funded support must participate in the early achievers program by the required deadlines established in RCW 43.216.515.

(c) Participation in the early achievers program is voluntary for:

(i) Licensed or certified child care centers (~~(and homes)~~), family home child care, and outdoor nature-based child care, not receiving state subsidy payments; and

(ii) Early learning programs not receiving state funds.

(d) School-age child care providers are exempt from participating in the early achievers program. By July 1, 2017, the department and the office of the superintendent of public instruction shall jointly design a plan to incorporate school-age child care providers into the early achievers program or other appropriate quality improvement system. To test implementation of the early achievers system for school-age child care providers the department and the office of the superintendent of public instruction shall implement a pilot program.

(4)(a) There are five primary levels in the early achievers program.

(b) In addition to the primary levels, the department must establish an intermediate level that is between level 3 and level 4 and serves to assist participants in transitioning to level 4.

(c) Participants are expected to actively engage and continually advance within the program.

(5) The department has the authority to determine the rating cycle for the early achievers program. The department shall streamline and eliminate duplication between early achievers standards and state child care rules in order to reduce costs associated with the early achievers rating cycle and child care licensing.

(a) Early achievers program participants may request to be rated at any time after the completion of all level 2 activities.

(b) The department shall provide an early achievers program participant an update on the participant's progress

toward completing level 2 activities after the participant has been enrolled in the early achievers program for fifteen months.

(c) The first rating is free for early achievers program participants.

(d) Each subsequent rating within the established rating cycle is free for early achievers program participants.

(6)(a) Early achievers program participants may request to be rerated outside the established rating cycle. A rerating shall reset the rating cycle timeline for participants.

(b) The department may charge a fee for optional rerating requests made by program participants that are outside the established rating cycle.

(c) Fees charged are based on, but may not exceed, the cost to the department for activities associated with the early achievers program.

(7)(a) The department must create a single source of information for parents and caregivers to access details on a provider's early achievers program rating level, licensing history, and other indicators of quality and safety that will help parents and caregivers make informed choices. The licensing history that the department must provide for parents and caregivers pursuant to this subsection shall only include license suspension, surrender, revocation, denial, stayed suspension, or reinstatement. No unfounded child abuse or neglect reports may be provided to parents and caregivers pursuant to this subsection.

(b) The department shall publish to the department's web site, or offer a link on its web site to, the following information:

(i) Early achievers program rating levels 1 through 5 for all child care programs that receive state subsidy, early childhood education and assistance programs, and federal head start programs in Washington; and

(ii) New early achievers program ratings within thirty days after a program becomes licensed or certified, or receives a rating.

(c) The early achievers program rating levels shall be published in a manner that is easily accessible to parents and caregivers and takes into account the

linguistic needs of parents and caregivers.

(d) The department must publish early achievers program rating levels for child care programs that do not receive state subsidy but have voluntarily joined the early achievers program.

(e) Early achievers program participants who have published rating levels on the department's web site or on a link on the department's web site may include a brief description of their program, contingent upon the review and approval by the department, as determined by established marketing standards.

(8)(a) The department shall create a professional development pathway for early achievers program participants to obtain a high school diploma or equivalency or higher education credential in early childhood education, early childhood studies, child development, or an academic field related to early care and education.

(b) The professional development pathway must include opportunities for scholarships and grants to assist early achievers program participants with the costs associated with obtaining an educational degree.

(c) The department shall address cultural and linguistic diversity when developing the professional development pathway.

(9) The early achievers quality improvement awards shall be reserved for participants offering programs to an enrollment population consisting of at least five percent of children receiving a state subsidy.

(10) In collaboration with tribal governments, community and statewide partners, and the early achievers review subcommittee created in RCW 43.216.075, the department shall develop a protocol for granting early achievers program participants an extension in meeting rating level requirement timelines outlined for the working connections child care program and the early childhood education and assistance program.

(a) The department may grant extensions only under exceptional circumstances, such as when early achievers program participants experience an unexpected life circumstance.

(b) Extensions shall not exceed six months, and early achievers program participants are only eligible for one extension in meeting rating level requirement timelines.

(c) Extensions may only be granted to early achievers program participants who have demonstrated engagement in the early achievers program.

(11)(a) The department shall accept national accreditation that meets the requirements of this subsection (11) as a qualification for the early achievers program ratings.

(b) Each national accreditation agency will be allowed to submit its most current standards of accreditation to establish potential credit earned in the early achievers program. The department shall grant credit to accreditation bodies that can demonstrate that their standards meet or exceed the current early achievers program standards. By December 1, 2019, and subject to the availability of amounts appropriated for this specific purpose, the department must submit a detailed plan to the governor and the legislature to implement a robust cross-accreditation process with multiple pathways that allows a provider to earn equivalent early achievers credit resulting from accreditation by high quality national organizations.

(c) Licensed child care centers ~~((and)),~~ child care home providers, and outdoor nature-based child care must meet national accreditation standards approved by the department for the early achievers program in order to be granted credit for the early achievers program standards. Eligibility for the early achievers program is not subject to bargaining, mediation, or interest arbitration under RCW 41.56.028, consistent with the legislative reservation of rights under RCW 41.56.028(4)(d).

(12) The department shall explore the use of alternative quality assessment tools that meet the culturally specific needs of the federally recognized tribes in the state of Washington.

(13) A child care or early learning program that is operated by a federally recognized tribe and receives state funds shall participate in the early achievers program. The tribe may choose to participate through an interlocal agreement between the tribe and the

department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty. The interlocal agreement must provide that:

(a) Tribal child care facilities and early learning programs may volunteer, but are not required, to be licensed by the department;

(b) Tribal child care facilities and early learning programs are not required to have their early achievers program rating level published to the department's web site or through a link on the department's web site; and

(c) Tribal child care facilities and early learning programs must provide notification to parents or guardians who apply for or have been admitted into their program that early achievers program rating level information is available and provide the parents or guardians with the program's early achievers program rating level upon request.

(14) The department shall consult with the early achievers review subcommittee on all substantial policy changes to the early achievers program.

(15) Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects or limits the legislature's authority to make programmatic modifications to licensed child care and early learning programs under RCW 41.56.028(4)(d).

Sec. 7. RCW 43.216.087 and 2019 c 369 s 5 are each amended to read as follows:

(1)(a) The department shall, in collaboration with tribal governments and community and statewide partners, implement a protocol to maximize and encourage participation in the early achievers program for culturally diverse and low-income center ~~((and)),~~ family home, and outdoor nature-based child care providers. Amounts appropriated for the encouragement of culturally diverse and low-income center ~~((and)),~~ family home, and outdoor nature-based child care provider participation shall be appropriated separately from the other funds appropriated for the department, are the only funds that may be used for the protocol, and may not be used for any other purposes. Funds appropriated for the protocol shall be considered an

ongoing program for purposes of future departmental budget requests.

(b) The department shall prioritize the resources authorized in this section to assist providers in the early achievers program to help them reach a rating of level 3 or higher wherever access to subsidized care is at risk.

(2) The protocol should address barriers to early achievers program participation and include at a minimum the following:

(a) The creation of a substitute pool;

(b) The development of needs-based grants for providers in the early achievers program who demonstrate a need for assistance to improve program quality. Needs-based grants may be used for environmental improvements of early learning facilities; purchasing curriculum development, instructional materials, supplies, and equipment; and focused infant-toddler improvements. Priority for the needs-based grants shall be given to culturally diverse and low-income providers;

(c) The development of materials and assessments in a timely manner, and to the extent feasible, in the provider and family home languages; and

(d) The development of flexibility in technical assistance and coaching structures to provide differentiated types and amounts of support to providers based on individual need and cultural context.

Sec. 8. RCW 43.216.089 and 2020 c 262 s 3 are each amended to read as follows:

(1) By December 15, 2020, the department, in consultation with the statewide child care resource and referral network, and the early achievers review subcommittee of the early learning advisory council, shall submit, in compliance with RCW 43.01.036, a final report to the governor and the legislature regarding providers' progress in the early achievers program. The report must include the following elements:

(a) The number, and relative percentage, of family child care, outdoor nature-based child care, and center providers who have enrolled in the early achievers program and who have:

(i) Completed the level 2 activities;

(ii) Completed rating readiness consultation and are waiting to be rated;

(iii) Achieved the required rating level to remain eligible for state-funded support under the early childhood education and assistance program or a subsidy under the working connections child care subsidy program;

(iv) Not achieved the required rating level initially but qualified for and are working through intensive targeted support in preparation for a partial rerate outside the standard rating cycle;

(v) Not achieved the required rating level initially and engaged in remedial activities before successfully achieving the required rating level;

(vi) Not achieved the required rating level after completing remedial activities; or

(vii) Received an extension from the department based on exceptional circumstances pursuant to RCW 43.216.085;

(b) A review of the services available to providers and children from diverse racial, ethnic, and cultural backgrounds;

(c) An examination of the effectiveness of efforts to increase successful participation by providers serving children and families from diverse racial, ethnic, and cultural backgrounds and providers who serve children from low-income households;

(d) A description of the primary obstacles and challenges faced by providers who have not achieved the required rating level to remain eligible to receive:

(i) A subsidy under the working connections child care program; or

(ii) State-funded support under the early childhood education and assistance program;

(e) A summary of the types of exceptional circumstances for which the department has granted an extension pursuant to RCW 43.216.085;

(f) The average amount of time required for providers to achieve local level milestones within each level of the early achievers program;

(g) To the extent data is available, an analysis of the distribution of early

achievers program-rated facilities in relation to child and provider demographics, including but not limited to race and ethnicity, home language, and geographical location;

(h) Recommendations for improving access for children from diverse racial, ethnic, and cultural backgrounds to providers rated at a level 3 or higher in the early achievers program;

(i) Recommendations for improving the early achievers program standards;

(j) An analysis of any impact from quality strengthening efforts on the availability and quality of infant and toddler care;

(k) The number of contracted slots that use both early childhood education and assistance program funding and working connections child care program funding;

(l) An analysis of the impact of increased regulations on the cost of child care; and

(m) A description of the early childhood education and assistance program implementation to include the following:

(i) Progress on early childhood education and assistance program implementation as required pursuant to RCW 43.216.515, 43.216.525, and 43.216.555;

(ii) An examination of the regional distribution of new preschool programming by school district;

(iii) An analysis of the impact of preschool expansion on low-income neighborhoods and communities;

(iv) Recommendations to address any identified barriers to access to quality preschool for children living in low-income neighborhoods;

(v) An analysis of any impact of extended day early care and education opportunities directives;

(vi) An examination of any identified barriers for providers to offer extended day early care and education opportunities;

(vii) An analysis of the demand for full-day programming for early childhood education and assistance program providers required under RCW 43.216.515; and

(viii) To the extent data is available, an analysis of the racial, ethnic, and cultural diversity of early childhood education and assistance program providers and participants.

(2) The elements required to be reported under subsection (1)(a) of this section must be reported at the county level, and for those counties with a population of five hundred thousand and higher, the data must be reported at the zip code level.

(3) If, based on information in an annual report submitted in 2018 or later under this section, fifteen percent or more of the licensed or contracted providers who are participating in the early achievers program in a county or in a single zip code have not achieved the rating levels under RCW 43.216.135 and 43.216.515, the department must:

(a) Analyze the reasons providers in the affected counties or zip codes have not attained the required rating levels; and

(b) Develop a plan to mitigate the effect on the children and families served by these providers. The plan must be submitted to the legislature as part of the final report described in subsection (1) of this section along with any recommendations for legislative action to address the needs of the providers and the children and families they serve.

(4)(a) Beginning December 1, 2020, the department, in collaboration with the statewide child care resource and referral network, shall make available on its public web site, in a consumer-friendly format, the following elements:

(i) The number, and relative percentage, of family child care and center child care providers who have enrolled in the early achievers program and who have:

(A) Submitted their request for on-site evaluation and are waiting to be rated; and

(B) Achieved the required rating level to remain eligible for state-funded support under the early childhood education and assistance program or a subsidy under the working connections child care subsidy program;

(ii) The distribution of early childhood education and assistance

program programming by school district; and

(iii) Indicators of supply and demand at the local level, as well as identification of regions or areas in which there are insufficient numbers of child care facilities using nationally developed methodology.

(b) The elements required to be made available under (a) (i) of this subsection (4) must be made available at the county level, and for those counties with a population of five hundred thousand and higher, the data must be reported at the zip code level.

(c) To the extent data are available, the elements required to be reported under (a) (ii) and (iii) of this subsection (4) must be updated at a minimum of a quarterly basis on the department's public web site.

(d) If in any individual state fiscal year, based on information reported in (a) (ii) and (iii) of this subsection (4), fifteen percent or more of the licensed or contracted providers who are participating in the early achievers program in a county or in a single zip code have not achieved the rating levels required under RCW 43.216.135 and 43.216.515, the department must:

(i) Analyze the reasons providers in the affected counties or zip codes have not attained the required rating levels; and

(ii) Develop a plan to mitigate the effect on the children and families served by these providers. The plan must be submitted to the legislature by November 1st of the year following the state fiscal year in question, along with any recommendations for legislative action to address the needs of the providers and the children and families they serve.

(5) Beginning September 15, 2021, and each odd-numbered year thereafter, the department shall submit a report to the governor and the legislature outlining the availability and quality of services available to early learning providers and children from diverse racial, ethnic, and cultural backgrounds and from low-income neighborhoods and communities. The report must include the following elements:

(a) To the extent data is available, an analysis of the racial, ethnic, and

linguistic diversity of early childhood education and assistance program providers and participants, and the providers and participants of working connections child care;

(b) A review of the services available to providers and children from diverse racial, ethnic, and cultural backgrounds;

(c) An examination of the effectiveness of efforts to increase and maintain successful participation by providers serving children and families from diverse racial, ethnic, and linguistic backgrounds and providers who serve children from low-income households;

(d) To the extent data is available, the distribution of early achievers program-rated facilities by child and provider demographics, including but not limited to race and ethnicity, home language, and geographical location;

(e) Recommendations for improving and maintaining access for children from diverse racial, ethnic, and cultural backgrounds to providers rated at a level 3 or higher in the early achievers program;

(f) Recommendations to address any identified barriers to access to high-quality preschool for children living in low-income neighborhoods;

(g) An examination of expulsion rates of children from diverse racial, ethnic, and diverse cultural backgrounds and from low-income neighborhoods and communities; and

(h) An analysis of how early learning providers and families from diverse racial, ethnic, and cultural backgrounds and from low-income neighborhoods and communities have influenced or participated in the department's early learning plans and implementation strategies.

(6) Beginning September 15, 2022, and each even-numbered year thereafter, the department shall submit a report to the governor and the legislature on the availability of supports to providers and their effectiveness at improving quality. The report must include the following elements:

(a) An analysis of the effectiveness of recruitment efforts for new and returning high-quality early learning providers and programs;

(b) An analysis of the effectiveness of quality improvement tools and incentives on the retention and quality improvement of early learning professionals;

(c) An analysis of the supply of high-quality subsidized early learning. This analysis must include:

(i) An examination of the trend in supply of early learning providers and workers;

(ii) A description of the primary obstacles and challenges faced by providers who have not achieved the required early achievers rating level to remain eligible to receive a subsidy under the working connections child care program or state-funded support under the early childhood education and assistance program;

(iii) The number, and relative percentage, of family child care and center providers who have enrolled in the early achievers program and who have:

(A) Not achieved the required rating level initially but qualified for and are working through intensive targeted support in preparation for a partial rerate outside the standard rating cycle;

(B) Not achieved the required rating level initially and engaged in remedial activities before successfully achieving the required rating level;

(C) Not achieved the required rating level after completing remedial activities; or

(D) Received an extension from the department based on exceptional circumstances pursuant to RCW 43.216.085; and

(iv) Recommendations for improving retention and reducing barriers to entry for early learning providers;

(d) The average amount of time required for providers to achieve local level milestones within each level of the early achievers program;

(e) A summary of the types of exceptional circumstances for which the department has granted an extension to early achievers rating milestones pursuant to RCW 43.216.085;

(f) An analysis of the availability and quality of infant and toddler care; and

(g) An examination of any identified barriers that discourage providers from offering extended day early care and education opportunities.

(7) The information to be disclosed or shared under this section must not include sensitive personal information of in-home caregivers for vulnerable populations as defined in RCW 42.56.640, and must not include any other information protected from disclosure under state or federal law.

Sec. 9. RCW 43.216.250 and 2018 c 58 s 70 are each amended to read as follows:

It shall be the secretary's duty with regard to licensing under this chapter:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities or outdoor locations for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2)(a) In consultation with the state fire marshal's office, the secretary shall use an interagency process to address health and safety requirements for child care programs that serve school-age children and are operated in buildings that contain public or private schools that safely serve children during times in which school is in session;

(b) Any requirements in (a) of this subsection as they relate to the physical facility, including outdoor playgrounds, do not apply to before-school and after-school programs that serve only school-age children and operate in the same facilities used by public or private schools;

(3) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter;

(4) In consultation with law enforcement personnel, the secretary shall investigate the conviction record

or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in child care;

(5) To satisfy the shared background check requirements provided for in RCW 43.216.270 and 43.20A.710, the department of children, youth, and families and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person;

(6) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of child care that an agency is authorized to render and the ages and number of children to be served;

(7) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;

(8) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

(9) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child care requirements; and

(10) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children.

Sec. 10. RCW 43.216.255 and 2015 3rd sp.s. c 7 s 3 are each amended to read as follows:

(1) No later than November 1, 2016, the department shall implement a single set of licensing standards for child care and the early childhood education and assistance program. The department shall produce the single set of licensing standards within the department's available appropriations. The new licensing standards must:

(a) Provide minimum (~~health and safety standards~~) licensing requirements for child care and preschool programs;

(b) Rely on the standards established in the early achievers program to address quality issues in participating early childhood programs;

(c) Take into account the separate needs of family care providers, outdoor nature-based child care providers, and child care centers; and

(d) Promote the continued safety of child care settings.

(2) Private schools that operate early learning programs and do not receive state subsidy payments shall be subject (~~only~~) to the minimum health and safety standards (~~in subsection (1)(a) of this section~~) as defined in RCW 43.216.395(2)(b), the health and safety requirements under chapter 28A.195 RCW, and the requirements necessary to assure a sufficient early childhood education to meet usual requirements needed for transition into elementary school. The state, and any agency thereof, shall not restrict or dictate any specific educational or other programs for early learning programs operated by private schools except for programs that receive state subsidy payments.

Sec. 11. RCW 43.216.260 and 2007 c 415 s 4 are each amended to read as follows:

Applications for licensure shall require, at a minimum, the following information:

(1) The size and suitability of a facility or location for an outdoor nature-based child care program, and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(2) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;

(3) The number of qualified persons required to render the type of care for which an agency seeks a license;

(4) (~~The~~) To provide for the comfort, care, and well-being of children, information about the health, safety, cleanliness, and general adequacy of the premises (~~to provide for the comfort, care, and well-being of~~

children)), including the real property and premises for an outdoor nature-based child care program;

(5) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;

(6) The financial ability of an agency to comply with minimum requirements established under this chapter; and

(7) The maintenance of records pertaining to the care of children.

Sec. 12. RCW 43.216.271 and 2017 3rd sp.s. c 6 s 207 are each amended to read as follows:

Subject to appropriation, the department shall maintain an individual-based or portable background check clearance registry. Any individual seeking a child care license or employment in any child care facility or outdoor nature-based child care program licensed or regulated under current law shall submit a background application on a form prescribed by the department in rule.

Sec. 13. RCW 43.216.280 and 2006 c 265 s 303 are each amended to read as follows:

Licensed child day care centers and outdoor nature-based child care providers shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW.

Sec. 14. RCW 43.216.305 and 2020 c 343 s 5 are each amended to read as follows:

(1) Each agency shall make application for a license or the continuation of a full license to the department (~~on forms~~) using a method prescribed by the department. Upon receipt of such application, the department shall either grant or deny a license or continuation of a full license within ninety days. A license or continuation shall be granted if the agency meets the minimum requirements set forth in this chapter and the departmental requirements consistent with this chapter, except that an initial license may be issued as provided in RCW 43.216.315. The department shall consider whether an agency is in good standing, as defined in subsection (4) (b) of this section, before

granting a continuation of a full license. Full licenses provided for in this chapter shall continue to remain valid so long as the licensee meets the requirements for a nonexpiring license in subsection (2) of this section and may be transferred to a new licensee in the event of a transfer of ownership of a child care operation. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter applies only to the licensee and the location stated in the application. For licensed family day care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move.

(2) In order to qualify for a nonexpiring full license, a licensee must meet the following requirements on an annual basis as established from the date of initial licensure:

(a) Submit the annual licensing fee;

(b) Submit a declaration to the department indicating the licensee's intent to continue operating a licensed child care program, or the intent to cease operation on a date certain;

(c) Submit a declaration of compliance with all licensing rules; and

(d) ~~((Submit))~~ For all current employees of the agency and as defined by department rule, submit background check applications into the department's electronic workforce registry on the schedule established by the department.

(3) If a licensee fails to meet the requirements in subsection (2) of this section for continuation of a full license the license expires and the licensee must submit a new application for licensure under this chapter.

(4) (a) Nothing about the nonexpiring license process may interfere with the department's established monitoring practice.

(b) For the purpose of this section, an agency is considered to be in good standing if in the intervening period between monitoring visits the agency does not have any of the following:

(i) Valid complaints;

(ii) A history of noncompliance related to those valid complaints or pending from prior monitoring visits; or

(iii) Other information that when evaluated would result in a finding of noncompliance with this section.

(c) The department shall consider whether an agency is in good standing when determining the most appropriate approach and process for monitoring visits, for the purposes of administrative efficiency while protecting children, consistent with this chapter. If the department determines that an agency is not in good standing, the department may issue a probationary license, as provided in RCW 43.216.320.

Sec. 15. RCW 43.216.325 and 2018 c 58 s 38 are each amended to read as follows:

(1) An agency may be denied a license, or any license issued pursuant to this chapter may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of this chapter or the requirements adopted pursuant to this chapter; or (b) that the conditions required for the issuance of a license under this chapter have ceased to exist with respect to such licenses. RCW 43.216.327 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(3) (a) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home.

(b) Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may

be assessed and collected, with interest, for each day an agency is or was out of compliance.

(c) Civil monetary penalties shall not exceed one hundred fifty dollars per violation for a family day care home and two hundred fifty dollars per violation for child day care centers or outdoor nature-based child care programs. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(d) The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period.

(e) The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. RCW 43.216.335 governs notice of a civil monetary penalty and provides the right to an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(4) (a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center, outdoor nature-based child care provider, or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day care center, outdoor nature-based child care provider, or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center, outdoor nature-based child care provider, or family day care provider.

(5) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center, outdoor nature-based child care provider, or family day care provider; or (b) place or remove a child

day care center, outdoor nature-based child care provider, or family day care provider on nonreferral status.

Sec. 16. RCW 43.216.340 and 2014 c 9 s 1 are each amended to read as follows:

(1) Before requiring any alterations to a child care facility due to inconsistencies with requirements in chapter 19.27 RCW, the department shall:

(a) Consult with the city or county enforcement official; and

(b) Receive written verification from the city or county enforcement official that the alteration is required.

(2) The department's consultation with the city or county enforcement official is limited to licensed child care space.

(3) Unless there is imminent danger to children or staff, the department may not modify, suspend, or revoke a child care license or business activities while the department is waiting to:

(a) Consult with the city or county enforcement official under subsection (1)(a) of this section; or

(b) Receive written verification from the city or county enforcement official that the alteration is required under subsection (1)(b) of this section.

(4) For the purposes of this section, "child care facility" means a family day care home, school-age care, outdoor nature-based child care, and child day care center.

Sec. 17. RCW 43.216.360 and 2011 c 296 s 3 are each amended to read as follows:

When the department suspects that an agency is providing child care services without a license, it shall send notice to that agency within ten days. The notice shall include, but not be limited to, the following information:

(1) That a license is required and the reasons why;

(2) That the agency is suspected of providing child care without a license;

(3) That the agency must immediately stop providing child care until the agency becomes licensed;

(4) That the department can issue a penalty of one hundred fifty dollars per day for each day a family day care home provided care without being licensed and

two hundred fifty dollars for each day a child day care center or outdoor nature-based child care provider provided care without being licensed;

(5) That if the agency does not initiate the licensing process within thirty days of the date of the notice, the department will post on its web site that the agency is providing child care without a license.

Sec. 18. RCW 43.216.395 and 2017 3rd sp.s. c 6 s 114 are each amended to read as follows:

(1) The department shall develop an internal review process to determine whether department licensors have appropriately and consistently applied agency rules in (~~(child care facility licensing compliance agreements)~~) inspection reports that do not involve a violation of health and safety standards. Adverse licensing decisions including license denial, suspension, revocation, modification, or nonrenewal pursuant to RCW 43.216.325 or imposition of civil fines pursuant to RCW 43.216.335 are not subject to the internal review process in this section, but may be appealed using the administrative procedure act, chapter 34.05 RCW.

(2) The definitions in this subsection apply throughout this section.

(a) "Child care facility licensing compliance agreement" means an agreement issued by the department in lieu of the department taking enforcement action against a child care provider that contains: (i) A description of the violation and the rule or law that was violated; (ii) a statement from the licensee regarding the proposed plan to comply with the rule or law; (iii) the date the violation must be corrected; (iv) information regarding other licensing action that may be imposed if compliance does not occur by the required date; and (v) the signature of the licensor and licensee or the licensee's delegate.

(b) "Health and safety standards" means rules or requirements developed by the department to protect the health and safety of children against (~~substantial~~) risk of bodily, mental, or psychological injury, harm, illness, or death.

(3) The internal review process shall be conducted by the following six individuals:

(a) Three department employees who may include child care licensors; and

(b) Three child care providers selected by the department from names submitted by the oversight board for children, youth, and families established in RCW 43.216.015.

(4) The internal review process established in this section may overturn, change, or uphold a department licensing decision by majority vote. In the event that the six individuals conducting the internal review process are equally divided, the secretary or the secretary's designee shall make the decision of the internal review process. The internal review process must provide the parties with a written decision of the outcome after completion of the internal review process. A licensee must request a review under the internal review process within ten days of the development of ~~((a child care facility licensing compliance agreement))~~ an inspection report and the internal review process must be completed within ~~((thirty))~~ sixty days after the request from the licensee to initiate the internal review process is received.

(5) A licensee may request a final review by the oversight board for children, youth, and families after completing the internal review process established in this section by giving notice to the department and the oversight board for children, youth, and families within ten days of receiving the written decision produced by the internal review process.

~~((6) The department shall not develop a child care facility licensing compliance agreement with a child care provider for first-time violations of rules that do not relate to health and safety standards and that can be corrected on the same day that the violation is identified. The department shall develop a procedure for providing a warning and offering technical assistance to providers in response to these first-time violations.))~~

Sec. 19. RCW 43.216.515 and 2020 c 321 s 1 are each amended to read as follows:

(1) Approved early childhood education and assistance programs shall receive state-funded support through the department. Public or private organizations including, but not limited to, school districts, educational service districts, community and

technical colleges, local governments, or nonprofit organizations, are eligible to participate as providers of the state early childhood education and assistance program.

(2) Funds obtained by providers through voluntary grants or contributions from individuals, agencies, corporations, or organizations may be used to expand or enhance preschool programs so long as program standards established by the department are maintained.

(3) Persons applying to conduct the early childhood education and assistance program shall identify targeted groups and the number of children to be served, program components, the qualifications of instructional and special staff, the source and amount of grants or contributions from sources other than state funds, facilities and equipment support, and transportation and personal care arrangements.

(4) A new early childhood education and assistance program provider must complete the requirements in this subsection to be eligible to receive state-funded support under the early childhood education and assistance program:

(a) Enroll in the early achievers program within thirty days of the start date of the early childhood education and assistance program contract;

(b)(i) Except as provided in (b)(ii) of this subsection, rate at a level 4 or 5 in the early achievers program within twenty-four months of enrollment. If an early childhood education and assistance program provider rates below a level 4 within twenty-four months of enrollment, the provider must complete remedial activities with the department, and must rate at or request to be rated at a level 4 or 5 within twelve months of beginning remedial activities.

(ii) Licensed or certified child care centers ~~((and homes))~~, family home providers, and outdoor nature-based child care providers that administer an early childhood education and assistance program shall rate at a level 4 or 5 in the early achievers program within twenty-four months of the start date of the early childhood education and assistance program contract. If an early childhood education and assistance program provider rates below a level 4 within twenty-four months, the provider

must complete remedial activities with the department, and must rate at or request to be rated at a level 4 or 5 within twelve months of beginning remedial activities.

(5) (a) If an early childhood education and assistance program provider has successfully completed all of the required early achievers program activities and is waiting to be rated by the deadline provided in this section, the provider may continue to participate in the early achievers program as an approved early childhood education and assistance program provider and receive state subsidy pending the successful completion of a level 4 or 5 rating.

(b) To avoid disruption, the department may allow for early childhood education and assistance program providers who have rated below a level 4 after completion of the twelve-month remedial period to continue to provide services until the current school year is finished.

(c) (i) If the early childhood education and assistance program provider described under subsection (4) (b) (i) or (ii) of this section does not rate or request to be rated at a level 4 or 5 following the remedial period, the provider is not eligible to receive state-funded support under the early childhood education and assistance program under this section.

(ii) If the early childhood education and assistance program provider described under subsection (4) (b) (i) or (ii) of this section does not rate at a level 4 or 5 when the rating is released following the remedial period, the provider is not eligible to receive state-funded support under the early childhood education and assistance program under this section.

(6) (a) When an early childhood education and assistance program in good standing changes classroom locations to a comparable or improved space within the same facility, or to a comparable or improved outdoor location for an outdoor nature-based child care, a rerating is not required outside of the regular rerating and renewal cycle.

(b) When an early childhood education and assistance program in good standing moves to a new facility, or to a new outdoor location for an outdoor nature-based child care, the provider must notify the department of the move within

six months of changing locations in order to retain their existing rating. The early achievers program must conduct an observational visit to ensure the new classroom space is of comparable or improved environmental quality. If a provider fails to notify the department within six months of a move, the early achievers rating must be changed from the posted rated level to "Participating, Not Yet Rated" and the provider will cease to receive tiered reimbursement incentives until a new rating is completed.

(7) The department shall collect data periodically to determine the demand for full-day programming for early childhood education and assistance program providers. The department shall analyze this demand by geographic region and shall include the findings in the annual report required under RCW 43.216.089.

(8) The department shall develop multiple pathways for licensed or certified child care centers and homes to administer an early childhood education and assistance program. The pathways shall include an accommodation for these providers to rate at a level 4 or 5 in the early achievers program according to the timelines and standards established in subsection (4) (b) (ii) of this section. The department must consider using the intermediate level that is between level 3 and level 4 as described in RCW 43.216.085, incentives, and front-end funding in order to encourage providers to participate in the pathway.

Sec. 20. RCW 43.216.530 and 2015 3rd sp.s. c 7 s 10 are each amended to read as follows:

The department shall review applications from public or private organizations for state funding of early childhood education and assistance programs. The department shall consider local community needs, demonstrated capacity, and the need to support a mixed delivery system of early learning that includes alternative models for delivery including licensed centers, outdoor nature-based child care providers, and licensed family child care providers when reviewing applications.

Sec. 21. RCW 43.216.650 and 2015 c 199 s 1 are each amended to read as follows:

(1) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition.

(2) (a) The department shall conduct a child fatality review if a child fatality occurs in an early learning program described in RCW (~~43.215.400 through 43.215.450~~) 43.216.500 through 43.216.550 or a licensed child care center, licensed outdoor nature-based child care, or a licensed child care home.

(b) The department shall convene a child fatality review committee and determine the membership of the review committee. The committee shall comprise individuals with appropriate expertise, including but not limited to experts from outside the department with knowledge of early learning licensing requirements and program standards, a law enforcement officer with investigative experience, a representative from a county or state health department, and a child advocate with expertise in child fatalities. The department shall invite one parent or guardian for membership on the child fatality review committee who has had a child die in a child care setting. The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case.

(c) The department shall allow the parents or guardians whose child's death is being reviewed to testify before the child fatality review committee.

(d) The primary purpose of the fatality review shall be the development of recommendations to the department and legislature regarding changes in licensing requirements, practice, or policy to prevent fatalities and strengthen safety and health protections for children.

(e) Upon conclusion of a child fatality review required pursuant to this section, the department shall, within one hundred eighty days following the fatality, issue a report on the results of the review, unless an extension has been granted by the governor. Reports must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100,

68.50.105, and 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

(3) The department shall consult with the office of the family and children's ombuds to determine if a review should be conducted in the case of a near child fatality that occurs in an early learning program described in RCW (~~43.215.400 through 43.215.450~~) 43.216.500 through 43.216.550 or licensed child care center, licensed outdoor nature-based child care, or licensed child care home.

(4) In any review of a child fatality or near fatality, the department and the fatality review team must have access to all records and files regarding the child or that are otherwise relevant to the review and that have been produced or retained by the early education and assistance program provider or licensed child care center, licensed outdoor nature-based child care, or licensed family home provider.

(5) The child fatality review committee shall coordinate with local law enforcement to ensure that the fatality or near fatality review does not interfere with any ongoing or potential criminal investigation.

(6) (a) A child fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a child fatality or near fatality review, or member of a child fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding the following:

(i) The work of the child fatality or near fatality review team;

(ii) The incident under review;

(iii) The employee's or member's statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review; or

(iv) Statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person

who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a child fatality or near fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting a person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with a minor's death or near fatality reviewed by a child fatality or near fatality review team.

(7) The department shall develop and implement procedures to carry out the requirements of this section.

(8) Nothing in this section creates a duty for the office of the family and children's ombuds under RCW 43.06A.030 as related to children in the care of an early learning program described in RCW (~~43.215.400 through 43.215.450~~) 43.216.500 through 43.216.550, a licensed child care center, a licensed outdoor nature-based child care, or a licensed child care home.

Sec. 22. RCW 43.216.660 and 2017 3rd sp.s. c 6 s 212 are each amended to read as follows:

It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. The availability of quality, affordable child care is a concern for working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to workplaces and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, (~~mini-centers~~) outdoor nature-based child care, centers, and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry through the department.

Sec. 23. RCW 43.216.685 and 2013 c 23 s 99 are each amended to read as follows:

(1) The department shall establish and maintain a toll-free telephone number, and an interactive web-based system through which persons may obtain information regarding child day care centers, outdoor nature-based child care providers, and family day care providers. This number shall be available twenty-four hours a day for persons to request information. The department shall respond to recorded messages left at the

number within two business days. The number shall be published in reasonably available printed and electronic media. The number shall be easily identifiable as a number through which persons may obtain information regarding child day care centers and family day care providers as set forth in this section.

(2) Through the toll-free telephone line established by this section, the department shall provide information to callers about: (a) Whether a day care provider is licensed; (b) whether a day care provider's license is current; (c) the general nature of any enforcement against the providers; (d) how to report suspected or observed noncompliance with licensing requirements; (e) how to report alleged abuse or neglect in a day care; (f) how to report health, safety, and welfare concerns in a day care; (g) how to receive follow-up assistance, including information on the office of the family and children's ombuds; and (h) how to receive referral information on other agencies or entities that may be of further assistance to the caller.

(3) (~~Beginning in January 2006, the~~) The department shall print the toll-free number established by this section on the face of new licenses issued to child day care centers, outdoor nature-based child care providers, and family day care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW.

Sec. 24. RCW 43.216.687 and 2007 c 415 s 6 are each amended to read as follows:

(1) Every child day care center, outdoor nature-based child care provider, and family day care provider shall prominently post the following items, clearly visible to parents and staff:

(a) The license issued under this chapter;

(b) The department's toll-free telephone number established by RCW (~~43.215.520~~) 43.216.685;

(c) The notice of any pending enforcement action. The notice must be posted immediately upon receipt. The notice must be posted for at least two weeks or until the violation causing the

enforcement action is corrected, whichever is longer;

(d) A notice that inspection reports and any notices of enforcement actions for the previous three years are available from the licensee and the department; and

(e) Any other information required by the department.

(2) The department shall disclose the receipt, general nature, and resolution or current status of all complaints on record with the department after July 24, 2005, against a child day care center or family day care provider that result in an enforcement action. Information may be posted:

(a) On a web site; or

(b) In a physical location that is easily accessed by parents and potential employers.

(3) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW.

Sec. 25. RCW 43.216.689 and 2007 c 415 s 7 are each amended to read as follows:

(1) Every child day care center, outdoor nature-based child care provider, and family day care provider shall have readily available for review by the department, parents, and the public a copy of each inspection report and notice of enforcement action received by the center or provider from the department for the past three years. This subsection only applies to reports and notices received on or after July 24, 2005.

(2) The department shall make available to the public during business hours all inspection reports and notices of enforcement actions involving child day care centers, outdoor nature-based child care providers, and family day care providers. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider.

(3) The department may make available on a publicly accessible web site all inspection reports and notices of licensing actions, including the corrective measures required or taken, involving child day care centers, outdoor

nature-based child care providers, and family day care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW.

Sec. 26. RCW 43.216.690 and 2019 c 362 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, ~~((a))~~ child day care ((center)) centers and outdoor nature-based child care providers licensed under this chapter may not allow on the premises an employee or volunteer, who has not provided the child day care center or outdoor nature-based child care provider with:

(a) Immunization records indicating that he or she has received the measles, mumps, and rubella vaccine; or

(b) Proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.

(2)(a) The child day care center and outdoor nature-based child care provider may allow a person to be employed or volunteer on the premises for up to thirty calendar days if he or she signs a written attestation that he or she has received the measles, mumps, and rubella vaccine or is immune from measles, but requires additional time to obtain and provide the records required in subsection (1)(a) or (b) of this section.

(b) The child day care center and outdoor nature-based child care provider may allow a person to be employed or volunteer on the premises if the person provides the child day care center or outdoor nature-based child care provider with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090, that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. This subsection (2)(b) does not apply if it is determined that the measles, mumps, and rubella vaccine is no longer contraindicated.

(3) The child day care center and outdoor nature-based child care provider shall maintain the documents required in subsection (1) or (2) of this section in

the person's personnel record maintained by the child day care center.

(4) For purposes of this section, "volunteer" means a nonemployee who provides care and supervision to children at the child day care center or outdoor nature-based child care program.

Sec. 27. RCW 43.216.700 and 2007 c 415 s 10 are each amended to read as follows:

(1) Every licensed child day care center and outdoor nature-based child care provider shall, at the time of licensure or renewal and at any inspection, provide to the department proof that the licensee has day care insurance as defined in RCW 48.88.020, or is self-insured pursuant to chapter 48.90 RCW.

(a) Every licensed child day care center and outdoor nature-based child care provider shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day care center or outdoor nature-based child care location, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(b) Liability limits under this subsection shall be the same as set forth in RCW 48.88.050.

(c) The department may take action as provided in RCW ~~((43.215.300))~~ 43.216.325 if the licensee fails to maintain in full force and effect the insurance required by this subsection.

(d) This subsection applies to child day care centers and outdoor nature-based child care providers holding licenses, initial licenses, and probationary licenses under this chapter.

(e) A child day care center holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(2)(a) Every licensed family day care provider shall, at the time of licensure or renewal either:

(i) Provide to the department proof that the licensee has day care insurance as defined in RCW 48.88.020, or other applicable insurance; or

(ii) Provide written notice of their insurance status on a standard form developed by the department to parents with a child enrolled in family day care and keep a copy of the notice to each parent on file. Family day care providers may choose to opt out of the requirement to have day care or other applicable insurance but must provide written notice of their insurance status to parents with a child enrolled and shall not be subject to the requirements of (b) or (c) of this subsection.

(b) Any licensed family day care provider that provides to the department proof that the licensee has insurance as provided under (a)(i) of this subsection shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day care home, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(c) Liability limits under (a)(i) of this subsection shall be the same as set forth in RCW 48.88.050.

(d) The department may take action as provided in RCW ~~((43.215.300))~~ 43.216.325 if the licensee fails to comply with the requirements of this subsection.

(e) A family day care provider holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(3) Noncompliance or compliance with the provisions of this section shall not constitute evidence of liability or nonliability in any injury litigation.

NEW SECTION. **Sec. 28.** A new section is added to chapter 43.216 RCW to read as follows:

(1) The department shall establish a licensed outdoor nature-based child care program.

(2) The department shall adopt rules to implement the outdoor nature-based child care program and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms.

(3) The department shall apply the early achievers program to the outdoor nature-based child care program to assess quality in outdoor learning environments and may waive or adapt early achievers requirements when necessary to allow for the operation of outdoor classrooms.

(4) A child care or early learning program operated by a federally recognized tribe may participate in the outdoor nature-based child care program through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(5) Subject to the availability of funds, the department may convene an advisory group of outdoor, nature-based early learning practitioners to inform and support implementation of the outdoor nature-based child care program.

Sec. 29. RCW 43.216.300 and 2018 c 58 s 41 are each amended to read as follows:

~~((1))~~ The secretary ~~((shall))~~ may not charge fees to the licensee for obtaining a child care license. ~~((The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.~~

~~(2) Fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.~~

~~(3) The secretary shall establish the fees charged by rule.)~~

Sec. 30. RCW 74.15.125 and 1995 c 302 s 7 are each amended to read as follows:

(1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license.

(7) (a) The department may issue a child-specific license to a relative, as defined in RCW 13.36.020, or a suitable person, as defined in RCW 13.36.020, who opts to become licensed for placement of a specific child and that child's siblings or relatives in the department's care, custody, and control.

(b) Such individuals must meet all minimum licensing requirements for foster family homes established pursuant to RCW 74.15.030 and are subject to child-specific license criteria, which the department is authorized to establish by rule.

(c) For purposes of federal funding, a child-specific license is considered a full license with all of the rights and responsibilities of a foster family home license, except that at the discretion of

the department the licensee may only receive placement of specific children pursuant to (a) of this subsection.

(d) A child-specific license does not confer upon the licensee a right to placement of a particular child, nor does it confer party status in any proceeding under chapter 13.34 RCW.

(e) The department shall seek input from the following stakeholders during the development and adoption of rules necessary to implement this section: Representatives from the kinship care oversight committee, an organization that represents current and former foster youth, an organization that represents child placing agencies, and a statewide advisory group of foster youth and alumni of foster care. The department shall seek tribal input as outlined in the department's government-to-government policy, per RCW 43.376.020.

NEW SECTION. Sec. 31. Section 3 of this act expires December 31, 2021.

NEW SECTION. Sec. 32. Section 4 of this act takes effect December 31, 2021.

NEW SECTION. Sec. 33. If specific funding for the purposes of section 29 of this act, referencing section 29 of this act by bill or chapter number and section number, is not provided by June 30, 2021, in the omnibus appropriations act, section 29 of this act is null and void.

NEW SECTION. Sec. 34. Section 29 of this act expires June 30, 2023."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Calder; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Chandler; Dye and Schmick.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5159

Prime Sponsor, Senator Warnick:
Concerning payments in lieu of real

property taxes by the department of the fish and wildlife. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5160 Prime Sponsor, Committee on Ways & Means: Addressing landlord-tenant relations by providing certain tenant protections during the public health emergency, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to certain rental assistance programs. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Housing, Human Services & Veterans.

Strike everything after the enacting clause and insert the following:

NEW SECTION. Sec. 1. The legislature finds that the COVID-19 pandemic is causing a sustained global economic slowdown, and an economic downturn throughout Washington state with unprecedented numbers of layoffs and reduced work hours for a significant percentage of our workforce. Many of the state's workforce has been impacted by these layoffs and substantially reduced work hours and have suffered economic hardship, disproportionately affecting low and moderate-income workers resulting in lost wages and the inability to pay for basic household expenses, including rent. Hundreds of thousands of tenants in Washington are unable to consistently pay their rent, reflecting the continued financial precariousness of many renters in the state. Before the COVID-19 pandemic, nonpayment of rent was the leading cause of evictions within the state. Because the COVID-19 pandemic has led to an inability for tenants to consistently pay rent, the likelihood of

evictions has increased, as well as life, health, and safety risks to a significant percentage of the state's tenants. As a result, the governor has issued a temporary moratorium on evictions as of March 2020, with multiple extensions and other related actions, to reduce housing instability and enable tenants to stay in their homes.

Therefore, it is the intent of the legislature with this act to increase tenant protections during the public health emergency, provide legal representation for qualifying tenants in eviction cases, establish an eviction resolution pilot program to address nonpayment of rent eviction cases before any court filing, and ensure tenants and landlords have adequate opportunities to access state and local rental assistance programs to reimburse landlords for unpaid rent and preserve tenancies.

NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW to read as follows:

The definitions in this section apply to sections 3 and 4 of this act unless the context clearly requires otherwise.

(1) "Dwelling unit" has the same meaning as defined in RCW 59.18.030, and includes a manufactured/mobile home or a mobile home lot as defined in RCW 59.20.030.

(2) "Eviction moratorium" refers to the governor of the state of Washington's proclamation 20-19.6, proclaiming a moratorium on certain evictions for all counties throughout Washington state on March 18, 2021, and any subsequent orders extending or amending such proclamation until it expires or is terminated by the governor of the state of Washington.

(3) "Landlord" has the same meaning as defined in RCW 59.18.030 and 59.20.030.

(4) "Prospective landlord" has the same meaning as defined in RCW 59.18.030.

(5) "Public health emergency" refers to the governor of the state of Washington's proclamation 20-05, proclaiming a state of emergency for all counties throughout Washington state on February 29, 2020, and any subsequent orders extending or amending such proclamation due to COVID-19 until the proclamation expires or is terminated by the governor of the state of Washington.

(6) "Rent" has the same meaning as defined in RCW 59.18.030.

(7) "Tenant" refers to any individual renting a dwelling unit or lot primarily for living purposes, including any individual with a tenancy subject to this chapter or chapter 59.20 RCW or any individual residing in transient lodging, such as a hotel or motel or camping area as their primary dwelling, for 30 days or more prior to March 1, 2020. "Tenant" does not include any individual residing in a hotel or motel or camping area as their primary dwelling for more than 30 days after March 1, 2020, if the hotel or motel or camping area has provided the individual with a seven-day eviction notice, which must include the following language: "For no-cost legal assistance, please call 2-1-1 or the Northwest Justice Project CLEAR Hotline outside King County (888) 201-1014 weekdays between 9:15 a.m. - 12:15 p.m., or (888) 387-7111 for seniors (age 60 and over). You may find additional resource information at <http://www.washingtonlawhelp.org>." "Tenant" also does not include occupants of homeless mitigation sites or a person entering onto land without permission of the landowner or lessor. For purposes of this subsection, any local government provision of solid waste or hygiene services to unsanctioned encampments does not constitute permission to occupy land.

TENANT PROTECTIONS

NEW SECTION. **Sec. 3.** A new section is added to chapter 59.18 RCW to read as follows:

(1) A landlord may not charge or impose any late fees or other charges against any tenant for the nonpayment of rent that became due between March 1, 2020, and six months following the expiration of the eviction moratorium.

(2) For rent that accrued between March 1, 2020, and the six months following the expiration of the eviction moratorium expiration date:

(a) A landlord may not report to a prospective landlord:

(i) A tenant's nonpayment of rent that accrued between March 1, 2020, and the six months following the expiration of the eviction moratorium; or

(ii) An unlawful detainer action pursuant to RCW 59.12.030(3) that resulted from a tenant's nonpayment of rent between March 1, 2020, and the six

months following the expiration of the eviction moratorium.

(b) A prospective landlord may not take an adverse action based on a prospective tenant's nonpayment of rent that occurred between March 1, 2020, and the six months following the expiration of the eviction moratorium.

(3)(a) A landlord or prospective landlord may not deny, discourage application for, or otherwise make unavailable any rental dwelling unit based on a tenant's or prospective tenant's medical history including, but not limited to, the tenant's or prospective tenant's prior or current exposure or infection to the COVID-19 virus.

(b) A landlord or prospective landlord may not inquire about, consider, or require disclosure of a tenant's or prospective tenant's medical records or history, unless such disclosure is necessary to evaluate a reasonable accommodation request or reasonable modification request under RCW 49.60.222.

(4) A landlord or prospective landlord in violation of this section is liable in a civil action for up to four and one-half times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees. A court must impose this penalty in an amount necessary to deter future violations, payable to the tenant bringing the action.

REPAYMENT PLANS

NEW SECTION. **Sec. 4.** A new section is added to chapter 59.18 RCW to read as follows:

(1) If a tenant has remaining unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium or the end of the public health emergency, whichever is greater, the landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payments equal to one-third of the monthly rental charges during the period of accrued debt. If a tenant fails to accept the terms of a reasonable repayment plan within 14 days of the landlord's offer, the landlord may proceed with an unlawful detainer action as set forth in RCW 59.12.030(3) but subject to any requirements under the eviction resolution pilot program

established under section 7 of this act. If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the landlord mitigation program as authorized under RCW 43.31.605(1)(d) or proceed with an unlawful detainer action as set forth in RCW 59.12.030(3) but subject to any requirements under the eviction resolution pilot program established under section 7 of this act. The court must consider the tenant's circumstances, including decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding.

(2) Any repayment plan entered into under this section must:

(a) Not require payment until 30 days after the repayment plan is offered to the tenant;

(b) Cover rent only and not any late fees, attorneys' fees, or any other fees and charges;

(c) Allow for payments from any source of income as defined in RCW 59.18.255(5) or from pledges by nonprofit organizations, churches, religious institutions, or governmental entities;

(d) Not include provisions or be conditioned on: The tenant's compliance with the rental agreement, payment of attorneys' fees, court costs, or other costs related to litigation if the tenant defaults on the rental agreement; a requirement that the tenant apply for governmental benefits or provide proof of receipt of governmental benefits; or the tenant's waiver of any rights to a notice under RCW 59.12.030 or related provisions before a writ of restitution is issued.

(3) It is a defense to an eviction under RCW 59.12.030(3) that a landlord did not offer a repayment plan in conformity with this section.

(4) To the extent available funds exist for rental assistance from a federal, state, local, private, or nonprofit program, the tenant or landlord may continue to seek rental assistance to reduce and/or eliminate the unpaid rent balance.

Sec. 5. RCW 43.31.605 and 2020 c 315 s 8 and 2020 c 169 s 2 are each reenacted and amended to read as follows:

(1)(a) Subject to the availability of funds for this purpose, the landlord

mitigation program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program.

(b) The following types of claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program are eligible for reimbursement from the landlord mitigation program account:

(i) Up to one thousand dollars for improvements identified in RCW 59.18.255(1)(a). In order to be eligible for reimbursement under this subsection (1)(b)(i), the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement under this subsection (1)(b)(i) may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(ii) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(iii) Reimbursement for damages established pursuant to subsection (2) of this section; and

(iv) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

(c) Claims related to landlord mitigation for an unpaid judgment for rent, unpaid judgments resulting from the tenant's failure to comply with an installment payment agreement identified in RCW 59.18.610, late fees, attorneys' fees, and costs after a court order pursuant to RCW 59.18.410(3), including any unpaid portion of the judgment after the tenant defaults on the payment plan pursuant to RCW 59.18.410(3)(c), are eligible for reimbursement from the landlord mitigation program account and are exempt from any postjudgment interest required under RCW 4.56.110. Any claim for reimbursement made pursuant to RCW 59.18.410(3)(e)(ii) must be accompanied by a court order staying the writ of

restitution pursuant to RCW 59.18.410(3). Any claim for reimbursement under this subsection (1)(c) is not an entitlement.

(i) The department shall provide for a form on its website for tenants and landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)(c).

(ii) The form must include: (A) Space for the landlord and tenant to provide names, mailing addresses, phone numbers, date of birth for the tenant, and any other identifying information necessary for the department to process payment; (B) the landlord's statewide vendor identification number and how to obtain one; (C) name and address to whom payment must be made; (D) the amount of the judgment with instructions to include any other supporting documentation the department may need to process payment; (E) instructions for how the tenant is to reimburse the department under (c)(iii) of this subsection; (F) a description of the consequences if the tenant does not reimburse the department as provided in this subsection (1)(c); (G) a signature line for the landlord and tenant to confirm that they have read and understood the contents of the form and program; and (H) any other information necessary for the operation of the program. If the tenant has not signed the form after the landlord has made good faith efforts to obtain the tenant's signature, the landlord may solely submit the form but must attest to the amount of money owed and sign the form under penalty of perjury.

(iii) When a landlord has been reimbursed pursuant to this subsection (1)(c), the tenant for whom payment was made shall reimburse the department by depositing the amount disbursed from the landlord mitigation program account into the court registry of the superior court in which the judgment was entered. The tenant or other interested party may seek an ex parte order of the court under the unlawful detainer action to order such funds to be disbursed by the court. Upon entry of the order, the court clerk shall disburse the funds and include a case number with any payment issued to the department. If directed by the court, a clerk shall issue any payments made by a tenant to the department without further court order.

(iv) The department may deny an application made by a tenant who has

failed to reimburse the department for prior payments issued pursuant to this subsection (1)(c).

(v) With any disbursement from the account to the landlord, the department shall notify the tenant at the address provided within the application that a disbursement has been made to the landlord on the tenant's behalf and that failure to reimburse the account for the payment through the court registry may result in a denial of a future application to the account pursuant to this subsection (1)(c). The department may include any other additional information about how to reimburse the account it deems necessary to fully inform the tenant.

(vi) The department's duties with respect to obtaining reimbursement from the tenant to the account are limited to those specified within this subsection (1)(c).

(vii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)(c), the department must create and maintain a waitlist and distribute funds in the order the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department shall not be civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

(d)(i) Claims related to landlord mitigation for:

(A) Up to \$15,000 in unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium and the tenant being low-income, limited resourced or experiencing hardship, voluntarily vacated or abandoned the tenancy; or

(B) Up to \$15,000 in remaining unpaid rent if a tenant defaults on a repayment plan entered into under section 4 of this act are eligible for reimbursement from the landlord mitigation program account subject to the program requirements under this section, provided the tenancy has not been terminated at the time of reimbursement.

(ii) A landlord is ineligible for reimbursement under this subsection

(1)(d) where the tenant vacated the tenancy because of an unlawful detainer action under RCW 59.12.030(3).

(iii) A landlord in receipt of reimbursement from the program pursuant to this subsection (1)(d) is prohibited from:

(A) Taking legal action against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy; or

(B) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy.

(2) In order for a claim under subsection (1)(b)(iii) of this section to be eligible for reimbursement from the landlord mitigation program account, a landlord must:

(a) Have ensured that the rental property was inspected at the commencement of the tenancy by both the tenant and the landlord or landlord's agent and that a detailed written move-in property inspection report, as required in RCW 59.18.260, was prepared and signed by both the tenant and the landlord or landlord's agent;

(b) Make repairs and then apply for reimbursement to the department;

(c) Submit a claim on a form to be determined by the department, signed under penalty of perjury; and

(d) Submit to the department copies of the move-in property inspection report specified in (a) of this subsection and supporting materials including, but not limited to, before repair and after repair photographs, videos, copies of repair receipts for labor and materials, and such other documentation or information as the department may request.

(3) The department shall make reasonable efforts to review a claim within ten business days from the date it received properly submitted and complete claims to the satisfaction of the department. In reviewing a claim pursuant to subsection (1)(b) of this section, and

determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a private market rental unit rented to a low-income tenant who is using a housing subsidy program.

(4) Claims pursuant to subsection (1)(b) of this section related to a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. While claims or damages may exceed five thousand dollars, total reimbursement from the program may not exceed five thousand dollars per tenancy.

(5) Damages, beyond wear and tear, that are eligible for reimbursement include, but are not limited to: Interior wall gouges and holes; damage to doors and cabinets, including hardware; carpet stains or burns; cracked tiles or hard surfaces; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damages beyond normal wear and tear may also be eligible for reimbursement at the department's discretion.

(6) All reimbursements for eligible claims shall be made on a first-come, first-served basis, to the extent of available funds. The department shall use best efforts to notify the tenant of the amount and the reasons for any reimbursements made.

(7) The department, in its sole discretion, may inspect the property and the landlord's records related to a claim, including the use of a third-party inspector as needed to investigate fraud, to assist in making its claim review and determination of eligibility.

(8) A landlord in receipt of reimbursement from the program pursuant to subsection (1)(b) and (d) of this section is prohibited from:

(a) Taking legal action against the tenant for damages attributable to the same tenancy; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy.

(9) A landlord denied reimbursement under subsection (1)(b)(iii) of this section may seek to obtain a judgment

from a court of competent jurisdiction and, if successful, may resubmit a claim for damages supported by the judgment, along with a certified copy of the judgment. The department may reimburse the landlord for that portion of such judgment that is based on damages reimbursable under the landlord mitigation program, subject to the limitations set forth in this section.

(10) Determinations regarding reimbursements shall be made by the department in its sole discretion.

(11) The department must establish a website that advertises the landlord mitigation program, the availability of reimbursement from the landlord mitigation program account, and maintains or links to the agency rules and policies established pursuant to this section.

(12) Neither the state, the department, or persons acting on behalf of the department, while acting within the scope of their employment or agency, is liable to any person for any loss, damage, harm, or other consequence resulting directly or indirectly from the department's administration of the landlord mitigation program or determinations under this section.

(13)(a) A report to the appropriate committees of the legislature on the effectiveness of the program and recommended modifications shall be submitted to the governor and the appropriate committees of the legislature by January 1, 2021. In preparing the report, the department shall convene and solicit input from a group of stakeholders to include representatives of large multifamily housing property owners or managers, small rental housing owners in both rural and urban markets, a representative of tenant advocates, and a representative of the housing authorities.

(b) The report shall include discussion of the effectiveness of the program as well as the department's recommendations to improve the program, and shall include the following:

(i) The number of total claims and total amount reimbursed to landlords by the fund;

(ii) Any indices of fraud identified by the department;

(iii) Any reports by the department regarding inspections authorized by and conducted on behalf of the department;

(iv) An outline of the process to obtain reimbursement for improvements and for damages from the fund;

(v) An outline of the process to obtain reimbursement for lost rent due to the rental inspection and tenant screening process, together with the total amount reimbursed for such damages;

(vi) An evaluation of the feasibility for expanding the use of the mitigation fund to provide up to ninety-day no interest loans to landlords who have not received timely rental payments from a housing authority that is administering section 8 rental assistance;

(vii) Any other modifications and recommendations made by stakeholders to improve the effectiveness and applicability of the program.

(14) As used in this section:

(a) "Housing subsidy program" means a housing voucher as established under 42 U.S.C. Sec. 1437 as of January 1, 2018, or other housing subsidy program including, but not limited to, valid short-term or long-term federal, state, or local government, private nonprofit, or other assistance program in which the tenant's rent is paid either partially by the program and partially by the tenant, or completely by the program directly to the landlord;

(b) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the private market rental unit is located; and

(c) "Private market rental unit" means any unit available for rent that is owned by an individual, corporation, limited liability company, nonprofit housing provider, or other entity structure, but does not include housing acquired, or constructed by a public housing agency under 42 U.S.C. Sec. 1437 as it existed on January 1, 2018.

Sec. 6. RCW 43.31.615 and 2019 c 356 s 13 are each amended to read as follows:

(1) The landlord mitigation program account is created in the custody of the state treasury. All transfers and appropriations by the legislature, repayments, private contributions, and

all other sources must be deposited into the account. Expenditures from the account may only be used for the landlord mitigation program under this chapter to reimburse landlords for eligible claims related to private market rental units during the time of their rental to low-income tenants using housing subsidy programs as defined in RCW 43.31.605, for any unpaid judgment issued within an unlawful detainer action after a court order pursuant to RCW 59.18.410(3) as described in RCW 43.31.605(1)(c), for any unpaid rent as described in RCW 43.31.605(1)(d), and for the administrative costs identified in subsection (2) of this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Administrative costs associated with application, distribution, and other program activities of the department may not exceed twenty percent of the annual funds available for the landlord mitigation program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(3) Funds deposited into the landlord mitigation program account shall be prioritized by the department for allowable costs under RCW 43.31.605(1)(b), and may only be used for other allowable costs when funding available in the account exceeds the amount needed to pay claims under RCW 43.31.605(1)(b).

EVICTION RESOLUTION PILOT PROGRAM

NEW SECTION. **Sec. 7.** A new section is added to chapter 59.18 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the administrative office of the courts shall contract with dispute resolution centers as described under chapter 7.75 RCW within or serving each county to establish a court-based eviction resolution pilot program operated in accordance with Washington supreme court order no. 25700-B-639 and any standing judicial order of the individual superior court.

(2) The eviction resolution pilot program must be used to facilitate the

resolution of nonpayment of rent cases between a landlord and tenant before the landlord files an unlawful detainer action.

(3) Prior to filing an unlawful detainer action for nonpayment of rent, the landlord must provide a notice as required under RCW 59.12.030(3) and an additional notice to the tenant informing them of the eviction resolution pilot program. The landlord must retain proof of service or mailing of the additional notice. The additional notice to the tenant must provide at least the following information regarding the eviction resolution pilot program:

(a) Contact information for the local dispute resolution center;

(b) Contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;

(c) The following statement: "The Washington state office of the attorney general has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at <http://www.washingtonlawhelp.org>";

(d) The name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and

(e) The following statement: "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

(4) At the time of service or mailing of the pay or vacate notice and additional notice to the tenant, a landlord must also send copies of these notices to the local dispute resolution center serving the area where the property is located.

(5) A landlord must secure a certification of participation with the resolution program by the appropriate dispute resolution center before an unlawful detainer action for nonpayment of rent may be heard by the court.

(6) The administrative office of the courts may also establish and produce any other notice forms and requirements as

necessary to implement the eviction resolution pilot program.

(7) Any superior court, in collaboration with the dispute resolution center that is located within or serving the same county, participating in the eviction resolution pilot program must report annually to the administrative office of the courts beginning January 1, 2022, until January 1, 2023, on the following:

(a) The number of unlawful detainer actions for nonpayment of rent that were subject to program requirements;

(b) The number of referrals made to dispute resolution centers;

(c) The number of nonpayment of rent cases resolved by the program;

(d) How many instances the tenant had legal representation either at the conciliation stage or formal mediation stage;

(e) The number of certifications issued by dispute resolution centers and filed by landlords with the court; and

(f) Any other information that relates to the efficacy of the pilot program.

(8) By July 1, 2022, until July 1, 2023, the administrative office of the courts must provide a report to the legislature summarizing the report data shared by the superior courts and dispute resolution centers under subsection (7) of this section.

(9) This section expires July 1, 2023.

RIGHT TO COUNSEL

NEW SECTION. **Sec. 8.** A new section is added to chapter 59.18 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding under chapters 59.12, 59.18, and 59.20 RCW. The office of civil legal aid is responsible for implementation of this subsection as provided in section 9 of this act, and the state shall pay the costs of legal services provided by an attorney appointed pursuant to this subsection. In implementing this section, the office of civil legal aid shall assign priority to providing legal representation to indigent tenants in those counties in which the most evictions occur and to

indigent tenants who are disproportionately at risk of eviction.

(2) For purposes of this section, "indigent" means any 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, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Receiving an annual income, after taxes, of 200 percent or less of the current federally established poverty level.

NEW SECTION. **Sec. 9.** A new section is added to chapter 2.53 RCW to read as follows:

(1) Moneys appropriated by the legislature for legal services provided by an attorney appointed pursuant to section 8 of this act must be administered by the office of civil legal aid established under RCW 2.53.020. The office of civil legal aid must enter into contracts with attorneys and agencies for the provision of legal services under section 8 of this act to remain within appropriated amounts.

(2) The legislature recognizes that the office of civil legal aid needs time to properly implement the right to attorney legal representation for indigent tenants under and consistent with section 8 of this act. Within 90 days after the effective date of this section, the office of civil legal aid must submit to the appropriate legislative committees a plan to fully implement the tenant representation program under and consistent with section 8 of this act within 12 months of the effective date of this section.

Sec. 10. RCW 59.18.057 and 2020 c 315 s 2 are each amended to read as follows:

(1) Every (~~fourteen-day~~) 14-day notice served pursuant to RCW 59.12.030(3) must be in substantially the following form:

"TO:

AND TO:

ADDRESS:

FOURTEEN-DAY NOTICE TO PAY RENT OR VACATE THE PREMISES

You are receiving this notice because the landlord alleges you are not in compliance with the terms of the lease agreement by failing to pay rent and/or utilities and/or recurring or periodic charges that are past due.

(1) Monthly rent due for (list month(s)): \$ (dollar amount)

AND/OR

(2) Utilities due for (list month(s)): \$ (dollar amount)

AND/OR

(3) Other recurring or periodic charges identified in the lease for (list month(s)): \$ (dollar amount)

TOTAL AMOUNT DUE: \$ (dollar amount)

Note - payment must be made pursuant to the terms of the rental agreement or by nonelectronic means including, but not limited to, cashier's check, money order, or other certified funds.

You must pay the total amount due to your landlord within fourteen (14) days after service of this notice or you must vacate the premises. Any payment you make to the landlord must first be applied to the total amount due as shown on this notice. Any failure to comply with this notice within fourteen (14) days after service of this notice may result in a judicial proceeding that leads to your eviction from the premises.

The Washington state Office of the Attorney General has this notice in multiple languages as well as information on available resources to help you pay your rent, including state and local rental assistance programs, on its website at www.atg.wa.gov/landlord-tenant. ~~((You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent.~~

Alternatively, for no-cost legal assistance for low-income renters)) State law provides you the right to legal representation and the court may be able to appoint a lawyer to represent you without cost to you if you are a qualifying low-income renter. If you believe you are a qualifying low-income renter and would like an attorney

appointed to represent you, please contact the Eviction Defense Screening Line at 855-657-8387 or apply online at <https://nwjustice.org/apply-online>. For additional resources, call 2-1-1 or the Northwest Justice Project CLEAR Hotline outside King County (888) 201-1014 weekdays between 9:15 a.m. - 12:15 p.m., or (888) 387-7111 for seniors (age 60 and over). You may find additional information to help you at <http://www.washingtonlawhelp.org>. Free or low-cost mediation services to assist in nonpayment of rent disputes before any judicial proceedings occur are also available at dispute resolution centers throughout the state. You can find your nearest dispute resolution center at <https://www.resolutionwa.org>.

State law also provides you the right to receive interpreter services at court.

OWNER/LANDLORD: _____ DATE: _____

WHERE TOTAL AMOUNT DUE IS TO BE PAID: _____ (owner/landlord name) _____ (address) _____ "

(2) Upon expiration of the eviction resolution pilot program established under section 7 of this act:

(a) The landlord must also provide the notice required in this section to the dispute resolution center located within or serving the county in which the dwelling unit is located. It is a defense to an eviction under RCW 59.12.030 that a landlord did not provide additional notice under this subsection.

(b) Dispute resolution centers are encouraged to notify the housing justice project or northwest justice project located within or serving the county in which the dispute resolution center is located, as appropriate, once notice is received from the landlord under this subsection.

(3) The form required in this section does not abrogate any additional notice requirements to tenants as required by federal, state, or local law.

Sec. 11. RCW 59.18.365 and 2020 c 315 s 4 are each amended to read as follows:

(1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court

in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff's attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND
FOR COUNTY

Plaintiff) NO.
/
Landlord/
Owner,)
vs.) EVICTION
Defendant) SUMMONS
/
Tenant/) (Residential
Occupant.))

THIS IS AN IMPORTANT LEGAL DOCUMENT TO EVICT YOU.

YOUR WRITTEN

RESPONSE MUST BE RECEIVED BY: 5:00 p.m., on

TO:
(Defendant's Name)
. (Defendant's Address)

GET HELP: If you do not respond by the deadline above, you will lose your right to defend yourself or be represented by a lawyer if you cannot afford one in court and could be evicted. (~~If you cannot afford a lawyer~~) The court may be able to appoint a lawyer to represent you without cost to you if you are low-income and are unable to afford a lawyer. If you believe you are a qualifying low-income renter and would like an attorney appointed to represent you, please contact the Eviction Defense Screening Line at 855-657-8387 or apply online at <https://nwjustice.org/apply-online>. For additional resources, you may call 2-1-1 or the Northwest Justice Project CLEAR Hotline outside King County (888) 201-1014 weekdays between 9:15 a.m. - 12:15 p.m., or (888) 387-7111 for seniors (age 60 and over). (~~They can refer you to free or low-cost legal help.~~) You may find additional information to help you at <http://www.washingtonlawhelp.org>. Free or low-cost mediation services to assist in nonpayment of rent disputes before any judicial proceedings occur are also available at dispute resolution centers throughout the state. You can find your nearest dispute resolution center at <https://www.resolutionwa.org>.

HOW TO RESPOND: Phone calls to your Landlord or your Landlord's lawyer are not a response. You may respond with a "notice of appearance." This is a letter that includes the following:

- (1) A statement that you are appearing in the court case
- (2) Names of the landlord(s) and the tenant(s) (as listed above)
- (3) Your name, your address where legal documents may be sent, your signature, phone number (if any), and case number (if the case is filed)

This case is / is not filed with the court. If this case is filed, you need to also file your response with the court by delivering a copy to the clerk

of the court at:
(Clerk's Office/Address/Room
number/Business hours of court clerk)

WHERE TO RESPOND: You must mail, fax,
or hand deliver your response letter to
your Landlord's lawyer, or if no lawyer
is named in the complaint, to your
Landlord. If you mail the response
letter, you must do it 3 days before the
deadline above. Request receipt of a
proof of mailing from the post office. If
you hand deliver or fax it, you must do
it by the deadline above. The address is:

. (Attorney/Landlord
Name)

. (Address)

. (Fax - required if
available)

COURT DATE: If you respond to this
Summons, you will be notified of your
hearing date in a document called an
"Order to Show Cause." This is usually
mailed to you. If you get notice of a
hearing, **you must go to the hearing.** If
you do not show up, your landlord can
evict you. Your landlord might also
charge you more money. If you move before
the court date, you must tell your
landlord or the landlord's attorney.

**LANDLORD ACCESS TO RENTAL ASSISTANCE
PROGRAMS**

NEW SECTION. Sec. 12. A new section
is added to chapter 43.185C RCW to read
as follows:

The department must authorize
landlords an opportunity to apply to the
following programs, if feasible, and
establish application and eligibility
requirements and any conditions on the
receipt of funds as the department deems
appropriate:

- (1) Rental assistance provided through
the consolidated homeless grant program;
- (2) Rental assistance provided through
the emergency solutions grant program;
and
- (3) Any rental assistance program
funded through receipt of any federal
COVID-19 relief funds.

OTHER TENANT PROTECTIONS

Sec. 13. RCW 59.12.040 and 2010 c 8 s
19007 are each amended to read as
follows:

Any notice provided for in this
chapter shall be served either (1) by

delivering a copy personally to the
person entitled thereto; or (2) if he or
she be absent from the premises
unlawfully held, by leaving there a copy,
with some person of suitable age and
discretion, and sending a copy through
the mail addressed to the person entitled
thereto at his or her place of residence;
or (3) if the person to be notified be a
tenant, or an unlawful holder of
premises, and his or her place of
residence is not known, or if a person of
suitable age and discretion there cannot
be found then by affixing a copy of the
notice in a conspicuous place on the
premises unlawfully held, and also
delivering a copy to a person there
residing, if such a person can be found,
and also sending a copy through the mail
addressed to the tenant, or unlawful
occupant, at the place where the premises
unlawfully held are situated. Service
upon a subtenant may be made in the same
manner: PROVIDED, That in cases where the
tenant or unlawful occupant, shall be
conducting a hotel, inn, lodging house,
boarding house, or shall be renting rooms
while still retaining control of the
premises as a whole, that the guests,
lodgers, boarders, or persons renting
such rooms shall not be considered as
subtenants within the meaning of this
chapter, but all such persons may be
served by affixing a copy of the notice
to be served in two conspicuous places
upon the premises unlawfully held; and
such persons shall not be necessary
parties defendant in an action to recover
possession of said premises. Service of
any notice provided for in this chapter
may be had upon a corporation by
delivering a copy thereof to any officer,
agent, or person having charge of the
business of such corporation, at the
premises unlawfully held, and in case no
such officer, agent, or person can be
found upon such premises, then service
may be had by affixing a copy of such
notice in a conspicuous place upon said
premises and by sending a copy through
the mail addressed to such corporation at
the place where said premises are
situated. Proof of any service under this
section may be made by the affidavit of
the person making the same in like manner
and with like effect as the proof of
service of summons in civil actions. When
a copy of notice is sent through the
mail, as provided in this section,
service shall be deemed complete when
such copy is deposited in the United
States mail in the county in which the
property is situated properly addressed

with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. (~~RCW 59.18.375 may also apply to notice given under this chapter.~~)

Sec. 14. RCW 59.18.230 and 2020 c 315 s 6 and 2020 c 177 s 2 are each reenacted and amended to read as follows:

(1)(a) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(b) Any agreement, whether oral or written, between a landlord and tenant, or their representatives, and entered into pursuant to an unlawful detainer action under this chapter that requires the tenant to pay any amount in violation of RCW 59.18.283 or the statutory judgment amount limits under RCW 59.18.410 (1) or (2), or waives any rights of the tenant under RCW 59.18.410 or any other rights afforded under this chapter except as provided in RCW 59.18.360 is void and unenforceable. A landlord may not threaten a tenant with eviction for failure to pay nonpossessory charges limited under RCW 59.18.283.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forgo rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorneys' fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into; or

(f) Agrees to pay late fees for rent that is paid within five days following its due date. If rent is more than five days past due, the landlord may charge

late fees commencing from the first day after the due date until paid. Nothing in this subsection prohibits a landlord from serving a notice to pay or vacate at any time after the rent becomes due.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her, statutory damages not to exceed (~~five hundred dollars~~) \$500, costs of suit, and reasonable attorneys' fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his or her personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to (~~five hundred dollars~~) \$500 per day but not to exceed (~~five thousand dollars~~) \$5,000, for each day or part of a day that the tenant is deprived of his or her property. The prevailing party may recover his or her costs of suit and a reasonable attorneys' fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his or her personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property.

Sec. 15. RCW 59.20.040 and 1999 c 359 s 3 are each amended to read as follows:

This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. Chapter 59.12 RCW shall be applicable only in implementation of the provisions of this chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable: PROVIDED, That the provision of RCW 59.12.090, 59.12.100, and 59.12.170 shall not apply to any rental agreement included under the provisions of this chapter. RCW 59.18.055 (~~and 59.18.370~~), section 8 of this act, 59.18.365, 59.18.370, and 59.18.380 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter, except when a mobile home, manufactured home, or park model or a tenancy in a mobile home lot is abandoned. Rentals of mobile homes, manufactured homes, or park models themselves are governed by the residential landlord-tenant act, chapter 59.18 RCW.

Sec. 16. RCW 59.18.410 and 2020 c 315 s 5 are each amended to read as follows:

(1) If at trial the verdict of the jury or, if the case is tried without a jury, the finding of the court is in favor of the landlord and against the tenant, judgment shall be entered for the restitution of the premises; and if the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings are tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the landlord by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved at trial, and, if the alleged unlawful detainer is based on

default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the tenant liable for the forcible entry, forcible detainer, or unlawful detainer for the amount of damages thus assessed, for the rent, if any, found due, and late fees if such fees are due under the lease and do not exceed seventy-five dollars in total. The court may award statutory costs. The court may also award reasonable attorneys' fees as provided in RCW 59.18.290.

(2) When the tenant is liable for unlawful detainer after a default in the payment of rent, execution upon the judgment shall not occur until the expiration of five court days after the entry of the judgment. Before entry of a judgment or until five court days have expired after entry of the judgment, the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court or to the landlord the amount of the rent due, any court costs incurred at the time of payment, late fees if such fees are due under the lease and do not exceed seventy-five dollars in total, and attorneys' fees if awarded, in which event any judgment entered shall be satisfied and the tenant restored to his or her tenancy. If the tenant seeks to restore his or her tenancy after entry of a judgment, the tenant may tender the amount stated within the judgment as long as that amount does not exceed the amount authorized under subsection (1) of this section. If a tenant seeks to restore his or her tenancy and pay the amount set forth in this subsection with funds acquired through an emergency rental assistance program provided by a governmental or nonprofit entity, the tenant shall provide a copy of the pledge of emergency rental assistance provided from the appropriate governmental or nonprofit entity and have an opportunity to exercise such rights under this subsection, which may include a stay of judgment and provision by the landlord of documentation necessary for processing the assistance. The landlord shall accept any pledge of emergency rental assistance funds provided to the tenant from a governmental or nonprofit entity before the expiration of any pay or vacate notice for nonpayment of rent for the full amount of the rent owing under the rental agreement. The landlord shall accept any written pledge of emergency rental assistance funds provided to the

tenant from a governmental or nonprofit entity after the expiration of the pay or vacate notice if the pledge will contribute to the total payment of both the amount of rent due, including any current rent, and other amounts if required under this subsection. The landlord shall suspend any court action for seven court days after providing necessary payment information to the nonprofit or governmental entity to allow for payment of the emergency rental assistance funds. By accepting such pledge of emergency rental assistance, the landlord is not required to enter into any additional conditions not related to the provision of necessary payment information and documentation. If a judgment has been satisfied, the landlord shall file a satisfaction of judgment with the court. A tenant seeking to exercise rights under this subsection shall pay an additional fifty dollars for each time the tenant was reinstated after judgment pursuant to this subsection within the previous twelve months prior to payment. If payment of the amount specified in this subsection is not made within five court days after the entry of the judgment, the judgment may be enforced for its full amount and for the possession of the premises.

(3)(a) Following the entry of a judgment in favor of the landlord and against the tenant for the restitution of the premises and forfeiture of the tenancy due to nonpayment of rent, the court, at the time of the show cause hearing or trial, or upon subsequent motion of the tenant but before the execution of the writ of restitution, may stay the writ of restitution upon good cause and on such terms that the court deems fair and just for both parties. In making this decision, the court shall consider evidence of the following factors:

(i) The tenant's willful or intentional default or intentional failure to pay rent;

(ii) Whether nonpayment of the rent was caused by exigent circumstances that were beyond the tenant's control and that are not likely to recur;

(iii) The tenant's ability to timely pay the judgment;

(iv) The tenant's payment history;

(v) Whether the tenant is otherwise in substantial compliance with the rental agreement;

(vi) Hardship on the tenant if evicted; and

(vii) Conduct related to other notices served within the last six months.

(b) The burden of proof for such relief under this subsection (3) shall be on the tenant. If the tenant seeks relief pursuant to this subsection (3) at the time of the show cause hearing, the court shall hear the matter at the time of the show cause hearing or as expeditiously as possible so as to avoid unnecessary delay or hardship on the parties.

(c) In any order issued pursuant to this subsection (3):

(i) The court shall not stay the writ of restitution more than ninety days from the date of order, but may order repayment of the judgment balance within such time. If the payment plan is to exceed thirty days, the total cumulative payments for each thirty-day period following the order shall be no less than one month of the tenant's share of the rent, and the total amount of the judgment and all additional rent that is due shall be paid within ninety days.

(ii) Within any payment plan ordered by the court, the court shall require the tenant to pay to the landlord or to the court one month's rent within five court days of issuance of the order. If the date of the order is on or before the fifteenth of the month, the tenant shall remain current with ongoing rental payments as they become due for the duration of the payment plan; if the date of the order is after the fifteenth of the month, the tenant shall have the option to apportion the following month's rental payment within the payment plan, but monthly rental payments thereafter shall be paid according to the rental agreement.

(iii) The sheriff may serve the writ of restitution upon the tenant before the expiration of the five court days of issuance of the order; however, the sheriff shall not execute the writ of restitution until after expiration of the five court days in order for payment to be made of one month's rent as required by (c)(ii) of this subsection. In the event payment is made as provided in (c)(ii) of this subsection for one month's rent, the court shall stay the writ of restitution ex parte without prior notice to the landlord upon the tenant filing and presenting a motion to stay with a declaration of proof of

payment demonstrating full compliance with the required payment of one month's rent. Any order staying the writ of restitution under this subsection (3)(c)(iii) shall require the tenant to serve a copy of the order on the landlord by personal delivery, first-class mail, facsimile, or email if agreed to by the parties.

(A) If the tenant has satisfied (c)(ii) of this subsection by paying one month's rent within five court days, but defaults on a subsequent payment required by the court pursuant to this subsection (3)(c), the landlord may enforce the writ of restitution after serving a notice of default in accordance with RCW 59.12.040 informing the tenant that he or she has defaulted on rent due under the lease agreement or payment plan entered by the court. Upon service of the notice of default, the tenant shall have three calendar days from the date of service to vacate the premises before the sheriff may execute the writ of restitution.

(B) If the landlord serves the notice of default described under this subsection (3)(c)(iii), an additional day is not included in calculating the time before the sheriff may execute the writ of restitution. The notice of default must be in substantially the following form:

NOTICE OF DEFAULT FOR RENT AND/OR PAYMENT PLAN ORDERED BY COURT

NAME(S)
ADDRESS
CITY, STATE, ZIP

THIS IS NOTICE THAT YOU ARE IN DEFAULT OF YOUR RENT AND/OR PAYMENT PLAN ORDERED BY THE COURT. YOUR LANDLORD HAS RECEIVED THE FOLLOWING PAYMENTS:

DATE
AMOUNT
DATE
AMOUNT
DATE
AMOUNT

THE LANDLORD MAY SCHEDULE YOUR PHYSICAL EVICTION WITHIN THREE CALENDAR DAYS OF SERVICE OF THIS NOTICE. TO STOP A PHYSICAL EVICTION, YOU ARE REQUIRED TO PAY THE BALANCE OF YOUR RENT AND/OR PAYMENT PLAN IN THE AMOUNT OF \$.

PAYMENT MAY BE MADE TO THE COURT OR TO THE LANDLORD. IF YOU FAIL TO PAY THE BALANCE WITHIN THREE CALENDAR DAYS, THE LANDLORD MAY PROCEED WITH A PHYSICAL EVICTION FOR POSSESSION OF THE UNIT THAT YOU ARE RENTING.

DATE
SIGNATURE
LANDLORD/AGENT
NAME
ADDRESS
PHONE

(iv) If a tenant seeks to satisfy a condition of this subsection (3)(c) by relying on an emergency rental assistance program provided by a government or nonprofit entity and provides an offer of proof, the court shall stay the writ of restitution as necessary to afford the tenant an equal opportunity to comply.

(v) The court shall extend the writ of restitution as necessary to enforce the order issued pursuant to this subsection (3)(c) in the event of default.

(d) A tenant who has been served with three or more notices to pay or vacate for failure to pay rent as set forth in RCW 59.12.040 within twelve months prior to the notice to pay or vacate upon which the proceeding is based may not seek relief under this subsection (3).

(e)(i) In any application seeking relief pursuant to this subsection (3) by either the tenant or landlord, the court shall issue a finding as to whether the tenant is low-income, limited resourced, or experiencing hardship to determine if the parties would be eligible for disbursement through the landlord mitigation program account established within RCW 43.31.605(1)(c). In making this finding, the court may include an inquiry regarding the tenant's income relative to area median income, household composition, any extenuating circumstances, or other factors, and may rely on written declarations or oral testimony by the parties at the hearing.

(ii) After a finding that the tenant is low-income, limited resourced, or experiencing hardship, the court may issue an order: (A) Finding that the landlord is eligible to receive on behalf of the tenant and may apply for reimbursement from the landlord mitigation program; and (B) directing the clerk to remit, without further order of

the court, any future payments made by the tenant in order to reimburse the department of commerce pursuant to RCW 43.31.605(1)(c)(iii). In accordance with RCW 43.31.605(1)(c), such an order must be accompanied by a copy of the order staying the writ of restitution. Nothing in this subsection (3)(e) shall be deemed to obligate the department of commerce to provide assistance in claim reimbursement through the landlord mitigation program if there are not sufficient funds.

(iii) If the department of commerce fails to disburse payment to the landlord for the judgment pursuant to this subsection (3)(e) within thirty days from submission of the application, the landlord may renew an application for a writ of restitution pursuant to RCW 59.18.370 and for other rent owed by the tenant since the time of entry of the prior judgment. In such event, the tenant may exercise rights afforded under this section.

(iv) Upon payment by the department of commerce to the landlord for the remaining or total amount of the judgment, as applicable, the judgment is satisfied and the landlord shall file a satisfaction of judgment with the court.

(v) Nothing in this subsection (3)(e) prohibits the landlord from otherwise applying for reimbursement for an unpaid judgment pursuant to RCW 43.31.605(1)(c) after the tenant defaults on a payment plan ordered pursuant to (c) of this subsection.

(vi) For the period extending one year beyond the expiration of the eviction moratorium, a tenant may demonstrate ability to pay in order to reinstate the tenancy by means of disbursement through the account established under RCW 43.31.605(1)(c); in such a case:

(A) Any restrictions imposed by subsection (3)(d) of this section shall not apply in determining if a tenant is eligible for reinstatement under subsection (3) of this section.

(B) Reimbursement on behalf of the tenant to the landlord may include up to three months of prospective rent to stabilize the tenancy as determined by the court.

(4) If a tenant seeks to stay a writ of restitution issued pursuant to this chapter, the court may issue an ex parte stay of the writ of restitution provided

the tenant or tenant's attorney submits a declaration indicating good faith efforts were made to notify the other party or, if no efforts were made, why notice could not be provided prior to the application for an ex parte stay, and describing the immediate or irreparable harm that may result if an immediate stay is not granted. The court shall require service of the order and motion to stay the writ of restitution by personal delivery, mail, facsimile, or other means most likely to afford all parties notice of the court date.

(5) In all other cases the judgment may be enforced immediately. If a writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required.

(6) This section also applies if the writ of restitution is issued pursuant to a final judgment entered after a show cause hearing conducted in accordance with RCW 59.18.380.

NEW SECTION. Sec. 17. This act does not apply to assisted living facilities licensed under chapter 18.20 RCW, to nursing homes licensed under chapter 18.51 RCW, to adult family homes licensed under chapter 70.128 RCW, or to continuing care retirement communities registered under chapter 18.390 RCW.

NEW SECTION. Sec. 18. RCW 59.18.375 (Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice) and 2008 c 75 s 2, 2006 c 51 s 2, & 1983 c 264 s 13 are each repealed.

NEW SECTION. Sec. 19. Sections 2 through 4 of this act supersede any other provisions within chapter 59.18 or 59.12 RCW, or chapter 59.20 RCW as applicable, that conflict with sections 2 through 4 of this act.

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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representative Harris.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5163 Prime Sponsor, Committee on Ways & Means: Concerning the placement and treatment of conditionally released sexually violent predators. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that in 2008, the sex offender policy board was established to provide a more coordinated and integrated response to sex offender management in Washington state. The legislature further finds that in March 2020, the board was convened to review policies and practices related to sexually violent predators. The legislature recognizes that the board released a report and a series of recommendations regarding improvement to the current practice in order to ensure a successful transition for individuals convicted of sex offenses from total confinement back into the community. The legislature resolves to increase community safety through successful transition by enacting the recommendations of the board and other related policies.

Sec. 2. RCW 71.09.020 and 2015 c 278 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) "Department" means the department of social and health services.

(2) "Fair share principles" and "fair share principles of release" means that each county has adequate options for conditional release housing placements

in a number generally equivalent to the number of residents from that county who are subject to total confinement pursuant to this chapter.

(3) "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))~~ (4) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

~~((4))~~ (5) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

~~((5))~~ (6) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

~~((6))~~ (7) "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. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

~~((7))~~ (8) "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.

~~((8))~~ (9) "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.

~~((9))~~ (10) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or

early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

~~((10))~~ (11) "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.

~~((11))~~ (12) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

~~((12))~~ (13) "Recent overt act" means any act, threat, or combination thereof 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 or behaviors.

~~((13))~~ (14) "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, public libraries, public and private youth camps, 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.

~~((14))~~ (15) "Secretary" means the secretary of social and health services or the secretary's designee.

~~((15))~~ (16) "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 facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

~~((16))~~ (17) "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.

~~((17))~~ (18) "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.

~~((18))~~ (19) "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.

~~((19))~~ (20) "Total confinement facility" means a secure 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 total confinement facility by the secretary.

~~((20))~~ (21) "Treatment" means the sex offender specific treatment program at the special commitment center or a specific course of sex offender treatment pursuant to RCW 71.09.092 (1) and (2).

Sec. 3. RCW 71.09.080 and 2012 c 257 s 6 are each amended to read as follows:

(1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2)(a) Any person committed or detained pursuant to this chapter shall be prohibited from possessing or accessing a personal computer if the resident's individualized treatment plan states that access to a computer is harmful to bringing about a positive response to a specific and certain phase or course of treatment.

(b) A person who is prohibited from possessing or accessing a personal computer under (a) of this subsection shall be permitted to access a limited functioning personal computer capable of word processing and limited data storage on the computer only that does not have: (i) Internet access capability; (ii) an optical drive, external drive, universal serial bus port, or similar drive capability; or (iii) the capability to display photographs, images, videos, or motion pictures, or similar display capability from any drive or port capability listed under (b)(ii) of this subsection.

(3) Any person committed pursuant to this chapter has the right to adequate care ~~(and)~~, individualized treatment,

and the development of an ongoing, clinically appropriate discharge plan as part of the treatment process. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting agency, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(4) The right to the development of a discharge plan under subsection (3) of this section does not guarantee that any particular person will be determined appropriate for discharge at any particular time. Nothing in this section precludes the department from expressing professional judgment regarding the suitability of discharge for the protection of a resident's safety or community safety. Individualized and ongoing discharge planning requires, at a minimum, and as part of a person's treatment plan, the following are addressed based on information known to the department and in accordance with policies developed by the department to implement this subsection:

(a) The resident's known physical health, functioning, and any need for health aid devices;

(b) The resident's known intellectual or cognitive level of functioning and need for specialized programming;

(c) The resident's known history of substance use and abuse;

(d) The resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

(e) The resident's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;

(f) A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and

(g) A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

(5) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

~~((+5))~~ (6) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

~~((+6))~~ (7) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

~~((+7))~~ (8) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the release order on the superintendent of the special commitment center, or later by agreement

of the person who is the subject of the petition.

Sec. 4. RCW 71.09.090 and 2018 c 131 s 2 are each amended to read as follows:

(1)(a) If the secretary determines that the person's condition has so changed that ~~((either: (a) The))~~ the person no longer meets the definition of a sexually violent predator ~~((; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community))~~, the secretary shall authorize the person to petition the court for ~~((conditional release to a less restrictive alternative or))~~ unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for ~~((conditional release to a less restrictive alternative or))~~ unconditional discharge, shall within ~~((forty-five))~~ 45 days order a hearing.

(b) If the secretary determines that the person's condition has so changed that conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, then the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative. Upon receipt of the petition, the court shall order the department to identify a less restrictive alternative placement that satisfies RCW 71.09.092 (1) through (4). Once identified, notice of the placement shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment as well as the person and his or her counsel. If the department cannot identify a placement available to the person that satisfies RCW 71.09.092 (1) through (4) within 90 days, the department shall provide a written certification to the court, the prosecuting agency responsible for the initial commitment, and the person and his or her counsel, detailing the efforts of the department to identify a qualifying placement. Upon the department's certification, the person may propose a placement that satisfies RCW 71.09.092 (1) through (3). After a less restrictive placement has been proposed by either the department or the person, the court shall within 45 days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b)(i) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting agency shall present prima facie evidence establishing: (A) That the committed person continues to meet the definition of a sexually violent predator; and (B) that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community.

(ii)(A) If the state produces prima facie evidence that the committed person continues to be a sexually violent predator, then the state's burden under (b)(i)(A) of this subsection is met and an unconditional release trial may not be ordered unless the committed person produces evidence satisfying: Subsection (4)(a) of this section; and subsection (4)(b)(i) or (ii) of this section.

(B) If the state produces prima facie evidence that a less restrictive alternative is not appropriate for the committed person, then the state's burden under (b)(i)(B) of this subsection is met, and a conditional release trial may

not be ordered unless the committed person:

(I) Produces evidence satisfying: Subsection (4)(a) of this section; and subsection (4)(b)(i) or (ii) of this section; and

(II) Presents the court with a specific placement satisfying the requirements of RCW 71.09.092.

(iii) In making the showing required under (b)(i) of this subsection, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c)(i) If the court at the show cause hearing determines that either: ~~((i))~~ (A) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator ~~((and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community))~~; or ~~((ii))~~ (B) probable cause exists to believe that the person's condition has so changed that ~~((A) The)~~ the person no longer meets the definition of a sexually violent predator ~~((or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community))~~, then the court shall set a hearing on ~~((either or both issues))~~ the issue of unconditional discharge.

(ii) If the court at the show cause hearing determines that the state has failed to present prima facie evidence that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community, the court shall enter an order directing the department to propose a less restrictive alternative that satisfies RCW 71.09.092 (1) through (4). If the department cannot identify a placement available to the person that satisfies RCW 71.09.092 (1) through (4) within 90 days, the department shall provide a written certification to the court, the prosecuting agency responsible for the initial commitment, and the person and his or her counsel, detailing the efforts of the department to identify a qualifying placement. Upon

the department's certification, the person may propose a placement that satisfies RCW 71.09.092 (1) through (3). After a less restrictive placement has been proposed by either the department or the person, the court shall set a hearing on the issue of conditional release.

(iii) If the court at the show cause hearing determines, based on the evidence submitted by the person, that probable cause exists to believe that release to a less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, the court shall set a hearing on the issue of conditional release if the person presents the court with a specific placement that satisfies the requirements of RCW 71.09.092.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), or if an immediately preceding less restrictive alternative was revoked due to the loss of adequate housing or treatment for reasons other than noncompliance with housing requirements, treatment, or other conditions of the less restrictive alternative, the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. ~~((The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the conditions of RCW 71.09.092 is presented to the court at the show cause hearing.))~~

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The prosecuting agency shall have a right to a current evaluation of the person by experts chosen by the state. The judge may require the person to complete any or all of the following procedures or tests

if requested by the evaluator: (i) A clinical interview; (ii) psychological testing; (iii) plethysmograph testing; and (iv) polygraph testing. The judge may order the person to complete any other procedures and tests relevant to the evaluation. The state is responsible for the costs of the evaluation. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) Whenever any indigent person is subjected to an evaluation under (a) of this subsection, the office of public defense is responsible for the cost of one expert or professional person conducting an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, such expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the hearing on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(c) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(d) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not

include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) When the court enters an order for unconditional discharge of a person from an immediately preceding less restrictive placement, the court must direct the clerk to transmit a copy of the order to the department of corrections for discharge process and termination of cause.

(6) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged.

~~((6))~~ (7) During any period of confinement pursuant to a criminal conviction, or for any period of detention awaiting trial on criminal charges, this section is suspended.

Sec. 5. RCW 71.09.092 and 2009 c 409 s 9 are each amended to read as follows:

Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists in Washington that complies with distance restrictions, is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) if the department has proposed housing that is outside of the county of commitment, a documented effort was made by the department to ensure that placement is consistent with fair share principles of release; (5) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and ~~((5))~~ (6) the person will be under the supervision of the department of corrections and is willing to comply with supervision requirements imposed by the department of corrections.

Sec. 6. RCW 71.09.096 and 2015 c 278 s 3 are each amended to read as follows:

(1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to testify and any privilege with regard to such person's testimony is deemed waived.

(4)(a) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. In imposing conditions, the court must impose a restriction on the proximity of the person's residence to public or private schools providing instruction to kindergarten or any grades one through 12 in accordance with RCW 72.09.340. Courts shall require a minimum distance restriction of 500 feet on the proximity of the person's residence to child care facilities and public or private schools providing instruction to kindergarten or any grades one through 12. The court shall order the department of corrections to investigate the less restrictive alternative and, within 60 days of the order to investigate,

recommend any additional conditions to the court. These conditions shall be individualized to address the person's specific risk factors and criminogenic needs and may include, but are not limited to the following: Specification of residence or restrictions on residence including distance restrictions, specification of contact with a reasonable number of individuals upon the person's request who are verified by the department of corrections to be appropriate social contacts, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, monitoring through the use of global positioning ~~((satellite [global positioning system]))~~ system technology, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(b) To the greatest extent possible, the person, person's counsel, prosecuting agency responsible for the initial commitment, treatment provider, supervising community corrections officer, and appropriate clinical staff of the special commitment center shall meet and collaborate to craft individualized, narrowly tailored, and empirically based conditions to present to the court to help facilitate the person's successful transition to the community.

(5)(a) Prior to authorizing release to a less restrictive alternative proposed by the department, the court shall consider whether ((it is appropriate to release the person to the person's county of commitment)) the person's less restrictive alternative placement is in accordance with fair share principles. To ensure equitable distribution of releases, and prevent the disproportionate grouping of persons subject to less restrictive orders in any one county, or in any one jurisdiction or community within a county, the legislature finds it is appropriate for releases to a less restrictive

alternative to occur in ~~((the person's county of commitment, unless))~~ a manner that adheres to fair share principles. The legislature recognizes that there may be reasons why the department may not recommend that a person be released to his or her county of commitment, including availability of individualized resources, the person's support needs, or when the court determines that the person's return to his or her county of commitment would be inappropriate considering any court-issued protection orders, victim safety concerns that cannot be addressed through use of global positioning system technology, the ~~((availability))~~ unavailability of appropriate treatment or facilities that would adequately protect the community, negative influences on the person, ~~((or))~~ and the location of family or other persons or organizations offering support to the person. If the court authorizes conditional release based on the department's proposal to a county other than the county of commitment, the court shall enter specific findings regarding its decision and identify whether the release remains in line with fair share principles.

(b) (i) When the department ~~((or court assists in developing a))~~ develops a less restrictive alternative placement under this section ~~((which is outside of the county of commitment, and there are two or more options for placement, it shall endeavor to develop the placement in a manner that does not have a disproportionate effect on a single county))~~, it shall attempt to identify a placement satisfying the requirements of RCW 71.09.092 that is aligned with fair share principles. The department shall document its rationale for the recommended placement.

(ii) If the department does not support or recommend conditional release to a less restrictive alternative due to a clinical determination, the department shall document its objection and certify that the department is developing the less restrictive alternative pursuant to a court order and not because of a clinical determination.

(iii) When the department develops or proposes a less restrictive alternative placement under this chapter, it shall be considered a predisposition recommendation.

(iv) In developing, modifying, and enforcing less restrictive alternatives,

the department shall be deemed to be performing a quasi-judicial function.

~~((b))~~ (c) If the committed person is not conditionally released to his or her county of commitment, the department shall provide the law and justice council of the county in which the person is conditionally released with notice and a written explanation, including whether the department remains in compliance with fair share principles regarding releases under this chapter.

~~((c))~~ (d) For purposes of this section, the person's county of commitment means the county of the court which ordered the person's commitment.

~~((d))~~ (e) This subsection (5) does not apply to releases to a secure community transition facility under RCW 71.09.250.

(6) (a) When ordered by the court, the department must provide less restrictive alternative treatment that includes, at a minimum:

(i) The services identified in the person's discharge plan as outlined in RCW 71.09.080(4);

(ii) The assignment of a community care coordinator;

(iii) Regular contacts with providers of court-ordered treatment services;

(iv) Community escorts, if needed;

(v) A transition plan that addresses the person's access to continued services upon unconditional discharge;

(vi) Financial support for necessary housing;

(vii) Life skills training and disability accommodations, if needed; and

(viii) Assistance in pursuing benefits, education, and employment.

(b) At the time the department of corrections is ordered to investigate a proposed less restrictive alternative placement, subject to the availability of amounts appropriated for this specific purpose, the department shall assign a social worker to assist the person with discharge planning, pursuing benefits, and coordination of care prior to release.

(i) The social worker shall assist the person with completing applications for

benefits prior to the person's release from total confinement.

(ii) To promote continuity of care and the individual's success in the community, the department social worker shall be responsible for initiating a clinical transition of care between the last treating clinician at the special commitment center and the person's designated community treatment provider. This transition between one clinical setting to another shall occur no later than 15 days before an individual's release from the special commitment center.

(iii) If applicable, the social worker shall assist the person with locating any needed disability accommodations in the community and with obtaining resources to help address the person's identified life skills needs prior to release from total confinement.

(7) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecuting agency, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

~~((7))~~ (8) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting agency so determines. The ~~((sole question))~~ questions to be determined by the court ~~((is))~~ are whether the person shall continue to be conditionally released to a less restrictive alternative, and if so, whether a modification to the person's less restrictive alternative order is appropriate to ensure the conditional release remains in the best interest of the person and adequate to protect the community. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection ~~((6))~~ (7) of this section

and the opinions of the secretary and other experts or professional persons.

Sec. 7. RCW 71.09.130 and 1995 c 216 s 16 are each amended to read as follows:

(1) In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person.

(2) If a person committed under this chapter disappears while on conditional release, the department of corrections may enter a warrant for the person's arrest for up to 72 hours pending entry of a bench warrant by the court.

(3) The department of corrections, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless the department of corrections, its officers, agency, and employees acted with gross negligence.

(4) The department, its officers, agents, and employees are not liable for the acts of individuals on conditional release unless the department, its officers, agents, and employees acted with gross negligence.

Sec. 8. RCW 71.09.140 and 2012 c 257 s 12 are each amended to read as follows:

(1) (a) At the earliest possible date, and in no event later than ~~((thirty))~~ 30 days before conditional release, change of address for a person on conditional release, or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

~~((a))~~ (i) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

~~((b))~~ (ii) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

~~((e))~~ (iii) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(b) A return to total confinement or to a secure community transition facility pending revocation or modification proceedings is not considered a change of address for purposes of (a) of this subsection, and an additional community notification process is not required, unless conditional release is revoked under RCW 71.09.098 or the return lasts longer than 90 days.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting agency.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting agency to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her

incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of ~~((sixteen))~~ 16, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

Sec. 9. RCW 71.09.250 and 2003 c 216 s 3 are each amended to read as follows:

(1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to ~~((twenty-four))~~ 24, consisting of up to ~~((fifteen))~~ 15 transitional beds and up to nine pretransitional beds. The residents occupying the transitional

beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than ~~((fifteen))~~ 15 residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the ~~((fifteen))~~ 15 residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition

facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of 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 had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of 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 had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess

of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) After the department demonstrates the need for additional bed capacity to the appropriate committees of the legislature, and receives approval and funding from the appropriate committees of the legislature to build additional bed capacity, the state is authorized to site and operate secure community transition facilities and other conditional release and transitional facilities in any county in the state in accordance with RCW 71.09.315. In identifying potential counties and sites within a county for the location of a secure community transition facility or other conditional release and transitional facilities, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities or other conditional release and transitional facilities within a county, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9) (a) "Equitable distribution" means siting or locating secure community transition facilities and other conditional release and transitional facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one

county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority may be exercised.

NEW SECTION. Sec. 10. A new section is added to chapter 71.09 RCW to read as follows:

To facilitate the primary role of the department in identifying less restrictive alternative placements under RCW 71.09.090 and discharge planning under RCW 71.09.080, subject to the availability of amounts appropriated for this specific purpose, the department shall conduct a study to explore the development of conditional release and transition facilities, which may include community-based state-operated living alternatives similar to the state-operated living alternative program operated by the developmental disabilities administration. Any facilities or placements developed under this section may be identified through a request for proposal process or through direct state acquisition and development. Any contracts with facilities or placements entered into under this section shall include a provision requiring oversight by the department to ensure the programs are operating appropriately.

NEW SECTION. Sec. 11. A new section is added to chapter 71.09 RCW to read as follows:

(1) In accordance with RCW 71.09.090 and 71.09.096, the department shall have the primary responsibility for developing a less restrictive alternative placement. To ensure the department has sufficient less restrictive alternative placements to choose from that satisfy the requirements of RCW 71.09.092, subject to the availability of amounts appropriated for this specific purpose, the department shall use a request for proposal process to solicit and contract with housing and treatment providers from across the state and facilitate fair share principles among the counties. In order to increase the number of housing options for individuals qualifying for a less restrictive alternative, the department shall have oversight of the vendors and providers who contract with the state, including the authority to inspect and

ensure compliance, negotiate the rates charged for services, ensure adequate living conditions of housing locations, and terminate contracts. The department shall maintain a statewide accounting of the contracted community housing and treatment providers in each county and provide a biannual report to the legislature and governor by December 1st on the availability and adequacy of less restrictive alternative placements and the department's compliance with fair share principles.

(2) To facilitate its duties required under this section, the department shall use the following housing matrix and considerations as a guide to planning and developing less restrictive alternative placements. The following considerations may not be used as a reason to deny a less restrictive alternative placement.

(a) Considerations for evaluating a proposed vendor's application for less restrictive alternative housing services shall include applicable state and local zoning and building codes, general housing requirements, availability of public services, and other considerations identified in accordance with RCW 71.09.315. The department shall require the housing provider to provide proof that the facility is in compliance with all local zoning and building codes.

(i) General housing requirements include running water, electricity, bedroom and living space of adequate size, and no mold or infestations.

(ii) Availability of public services include availability of chaperones and whether the placement is within a reasonable distance to a grocery store, bank, public transportation options, and offices for public services and benefits.

(iii) Other considerations include whether the placement is consistent with fair share principles across the counties, whether the placement is within reasonable distance to other current or planned components of the less restrictive alternative, whether the placement is within reasonable distance to employment opportunities, and the reliability of global positioning system technology.

(b) Factors for evaluating less restrictive alternative options for a specific individual include sex offender treatment considerations, criminogenic needs and risk factors, protective

factors, and the specific needs of the client.

(i) Sex offender treatment considerations include whether the housing is within a reasonable distance from the treatment provider, whether the treatment provider is a good therapeutic match with the client, and whether the treatment provider has relevant experience and background to treat the client if the client has special needs.

(ii) Criminogenic needs and risk factors include consideration of the person's specific needs and risk factors in evaluating less restrictive alternative options.

(iii) Protective factors include whether housing is within a reasonable distance of family, friends, potential hobbies, potential employment, and educational opportunities.

(iv) Consideration of the client's specific needs includes assessing the availability of personal care assistance and in-home care assistance, and whether housing is within a reasonable distance of mental health, medical treatment options, and substance use disorder treatment options.

NEW SECTION. Sec. 12. A new section is added to chapter 71.09 RCW to read as follows:

(1) The department shall enter into a memorandum of understanding with the department of licensing to allow residents in total confinement at the special commitment center to obtain a state identification card through a written identification verification letter completed by the special commitment center and delivered to the department of licensing.

(2) The process shall occur upon the person's initial detention at the special commitment center. The process shall reoccur when the person's state identification card expires.

NEW SECTION. Sec. 13. A new section is added to chapter 71.09 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, the sex offender policy board, and department of health shall convene a work group to develop recommendations to increase the availability and quality of sex offender treatment providers to meet the growing

number of persons qualifying for conditional release to a less restrictive alternative. The work group shall gather data on best practices in other states and make recommendations whether sex offender treatment providers should be required to contract with the department; whether annual or biannual trainings by the department should be mandatory for prospective and existing sex offender treatment providers; whether the department should provide competitive wages for services or pay that is commensurate with the years of experience or education level of the treatment provider; and whether the department should provide other incentives such as a cost-of-living pay increase or compensating providers for the cost of mandated trainings associated with the sex offender treatment provider license under chapter 18.155 RCW. A report shall be submitted to the legislature by December 1, 2021.

(2) This section expires June 30, 2022.

NEW SECTION. Sec. 14. A new section is added to chapter 71.09 RCW to read as follows:

(1) In accordance with RCW 9.94A.8673, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall also explore and make recommendations whether to continue or remove the prohibition on a less restrictive alternative from including a placement in the community protection program pursuant to RCW 71A.12.230. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

(2) This section expires June 30, 2023.

NEW SECTION. Sec. 15. A new section is added to chapter 9.94A RCW to read as follows:

(1) In accordance with section 14 of this act, the sex offender policy board shall meet quarterly during the 2021-2023 biennium to continue its review of sexually violent predators and less restrictive alternative policies and

best practices, collaborate with stakeholders and the department, provide outreach to providers and stakeholders, and monitor implementation of this act. The board shall provide semiannual updates to the appropriate committees of the legislature during the 2021-2023 biennium.

(2) This section expires June 30, 2023."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Caldier; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Chandler; Dye; Hoff; Schmick and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5172 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning the retroactivity of overtime claims in exceptional cases. (REVISED FOR ENGROSSED: Providing overtime standards for the agricultural workforce.) Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chandler; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Jacobsen; Rude and Schmick.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Dye and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5183 Prime Sponsor, Committee on Ways & Means: Concerning victims of nonfatal strangulation. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature finds that nonfatal strangulation is among the most dangerous acts of domestic violence and sexual assault. Strangulation involves external compression of the victim's airway and blood vessels, causing reduced air and blood flow to the brain. Victims may show no or minimal external signs of injury despite having life-threatening internal injuries including traumatic brain injury. Injuries may present after the assault or much later and may persist for months and even years postassault. Victims who are strangled multiple times face a greater risk of traumatic brain injury. Traumatic brain injury symptoms are often not recognized as assault-related and may include cognitive difficulties such as decreased ability to concentrate, make decisions, and solve problems. Traumatic brain injury symptoms may also include behavior and personality changes such as irritability, impulsivity, and mood swings.

Domestic violence victims who have been nonfatally strangled are eight times more likely to become a subsequent victim of homicide at the hands of the same abusive partner. Research shows that previous acts of strangulation are a unique and substantial predictor of attempted and completed homicide against an intimate partner.

For years, forensic nurses in Washington have provided high-level care to sexual assault victims. Forensic nurses are also trained in medical evaluation of nonfatal strangulation, but only provide this evaluation in cases of sexual assault involving strangulation, as crime victims' compensation will not reimburse in nonsexual assault cases. Strangulation affects victims physically and psychologically. These victims deserve a higher standard of response and medical care. Allowing crime victims' compensation to reimburse for forensic nurse examinations for victims of

domestic violence strangulation will provide a better, more victim-centered response in the most dangerous of domestic violence felony cases.

NEW SECTION. Sec. 2. A new section is added to chapter 43.280 RCW to read as follows:

(1) The office of crime victims advocacy shall develop best practices that local communities may use on a voluntary basis to create more access to forensic nurse examiners in cases of nonfatal strangulation assault including, but not limited to, partnerships to serve multiple facilities, mobile nurse examiner teams, and multidisciplinary teams to serve victims in local communities.

(a) When developing the best practices, the office of crime victims advocacy shall consult with:

(i) The Washington association of sheriffs and police chiefs;

(ii) The Washington association of prosecuting attorneys;

(iii) The Washington state coalition against domestic violence;

(iv) The Harborview abuse and trauma center;

(v) The Washington state hospital association;

(vi) The Washington state association of counties;

(vii) The association of Washington cities;

(viii) The Washington coalition of sexual assault programs;

(ix) The schools of nursing at Washington State University and the University of Washington;

(x) Collective bargaining representatives of frontline nurse examiners; and

(xi) Other organizations deemed appropriate by the office of crime victims advocacy.

(b) The office of crime victims advocacy shall complete the best practices no later than January 1, 2022, and publish them on its website.

(2) The office of crime victims advocacy shall develop strategies to make forensic nurse examiner training available to nurses in all regions of the

state without requiring the nurses to travel unreasonable distances and without requiring medical facilities or the nurses to incur unreasonable expenses. Among other important factors deemed relevant and appropriate by the office of crime victims advocacy, the strategies should take into account the unique challenges faced by medical facilities and nurses operating in rural areas.

(a) When developing the strategies, the office of crime victims advocacy shall consult with:

(i) The Harborview abuse and trauma center;

(ii) The department of health;

(iii) The nursing care quality assurance commission;

(iv) The Washington state nurses association;

(v) The Washington state hospital association;

(vi) The schools of nursing at Washington State University and the University of Washington;

(vii) Forensic nurse practitioners; and

(viii) Other organizations deemed appropriate by the office of crime victims advocacy.

(b) The office of crime victims advocacy shall report the strategies to the governor and the appropriate committees of the legislature no later than October 1, 2022.

(3) This section expires June 30, 2023.

NEW SECTION. Sec. 3. A new section is added to chapter 7.68 RCW to read as follows:

(1) No costs incurred by a hospital or other emergency medical facility for the examination of the victim of domestic violence assault involving nonfatal strangulation, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be billed or charged directly or indirectly to the victim of such assault. Such costs shall be paid by the state pursuant to this chapter.

(2) The department must notify the office of financial management and the fiscal committees of the legislature if

it projects that the cost of services provided under this section exceeds the amount of funding provided by the legislature solely for the purposes of this section.

(3) No later than October 1, 2022, the department shall report to the legislature the following information for fiscal year 2022:

(a) The number, type, and amount of claims received by victims of suspected nonfatal strangulation, with a subtotal of claims that also involved sexual assault;

(b) The number, type, and amount of claims paid for victims of suspected nonfatal strangulation, with a subtotal of claims that also involved sexual assault; and

(c) The number of police reports filed by victims of suspected nonfatal strangulation who received services under this section.

(4) This section expires June 30, 2023."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

March 31, 2021

E2SSB 5188 Prime Sponsor, Committee on Ways & Means: Concerning creation of the Washington state public financial cooperative. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Consumer Protection & Business.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. FINDINGS AND INTENT. The legislature finds that there exists in the state of Washington billions of dollars of critical local projects for the planning, acquisition,

construction, repair, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, storm and sanitary sewage systems, solid waste handling, communications systems, housing, and other public infrastructure and economic development projects. But while some local governments successfully borrow for infrastructure and economic development capital projects through private sector lenders and the bond markets, other government entities do not have the same access to capital at attractive rates to be used in building out public infrastructure.

It is the policy of the state of Washington to encourage self-reliance by local and tribal governments in meeting their public works and economic development needs, and to assist in the financing of critical public works and economic development projects by providing effective mechanisms for making and financing loans and providing financing guarantees that do not create state debt. It is also the policy of the state to provide technical assistance to government entities for these projects.

It is further the policy of the state to foster and promote by all reasonable means the provision of adequate capital markets and facilities for borrowing money by local governments in the state to finance infrastructure improvements, and to the greatest extent possible to reduce costs of borrowed money to taxpayers and residents of the state.

The legislature finds that a Washington state public financial cooperative would provide opportunities for local and tribal government entities to competitively finance a broad array of public infrastructure and economic development projects, including housing, at competitive rates with low administrative costs. A state public financial cooperative will complement the existing banking system by filling gaps that the system cannot or will not fill, and it will be uniquely positioned to provide specialized technical assistance to the diverse needs of local and tribal government entities.

It is the purpose of this chapter to establish a Washington state public financial cooperative to act as a financial conduit that, without creating state debt, can receive funds from state, local, and tribal government entities, issue and make loans to those entities,

and issue bonds in a manner that does not create state debt, to help facilitate access to needed capital by local and tribal government entities on reasonable terms and rates.

The state public financial cooperative will have full powers to borrow money and to issue its bonds and notes in a manner that does not create state debt in order to make capital funds available for borrowing by local and tribal government entities, and those powers will enable the state public financial cooperative to carry out the declared policies of this act, which are in the public interest of the state and its taxpayers and residents.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the operating board of the cooperative established in section 3 of this act.

(2) "Bonds" means any bonds, notes, debentures, interim certificates, conditional sales or lease financing agreements, lines of credit, forward purchase agreements, investment agreements, and other banking or financial arrangements, guaranties, or other obligations issued by or entered into by the cooperative, which does not create state debt. Such bonds may be issued on either a tax-exempt or taxable basis.

(3) "Borrower" means one or more local or tribal governments.

(4) "Cooperative" means the Washington state public financial cooperative established in section 3 of this act, or any board, body, commission, department, or officer succeeding to the principal functions of the cooperative or to whom the powers conferred upon the cooperative are given by law.

(5) "Financial assistance" means the infusion of capital to a borrower for use in the planning, acquisition, construction, repair, replacement, rehabilitation, development, and expansion of infrastructure and economic development projects.

(6) "Financing agreements" means, and includes without limitation, a contractual arrangement with a borrower whereby the cooperative obtains rights from a borrower in exchange for the

granting of financial assistance to the borrower.

(7) "Financing document" means an instrument executed by the cooperative and one or more borrowers pertaining to the issuance of or security for bonds, or the application of the proceeds of bonds or other funds of, or payable to, the cooperative. A financing document may include, but need not be limited to, a lease, installment sale agreement, conditional sale agreement, mortgage, loan agreement, trust agreement or indenture, security agreement, letter or line of credit, reimbursement agreement, insurance policy, guaranty agreement, or currency or interest rate swap agreement. A financing document also may be an agreement between the cooperative and an eligible banking organization which has agreed to make a loan to a borrower.

(8) "Infrastructure projects" means undertakings for the planning, acquisition, construction, repair, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, storm and sanitary sewage systems, solid waste handling, pollution control facilities, schools, communications systems, docks and wharves, mass transportation facilities and equipment, public housing, fire suppressing and emergency services equipment and facilities, energy generating, conservation, or transmission facilities, and other public infrastructure deemed eligible by the board.

(9) "Local government" means any Washington city, town, county, special purpose district, authority, instrumentality, or other local municipal or interlocal entity created pursuant to Washington law.

(10) "Member" means the state government, a local government, or a tribal government that has joined the cooperative consistent with section 4 of this act.

(11) "Project costs" means costs of:

(a) Acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of land, rights to land, buildings, structures, docks, wharves, fixtures, machinery, equipment, excavations, paving, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities, and any

other real or personal property included in an infrastructure project;

(b) Architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, acquisition, lease, construction, reconstruction, remodeling, refurbishing, rehabilitation, extension, and enlargement of an infrastructure project, including costs of studies assessing the feasibility of an infrastructure project;

(c) Finance costs, including the costs of credit enhancement and discounts, if any, the costs of issuing revenue bonds, and the costs incurred in carrying out any financing document;

(d) Start-up costs, working capital, capitalized research and development costs, capitalized interest during construction and during the 18 months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves;

(e) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(f) Other costs incidental to any of the costs listed in this subsection.

(12) "State" means the state of Washington and any department, agency, or instrumentality thereof other than the cooperative.

(13) "Tribal government" means the governing body of a federally recognized Indian tribe.

NEW SECTION. Sec. 3. ESTABLISHMENT.

(1) The Washington state public financial cooperative is established as a public body corporate and politic, with perpetual corporate succession, constituting an instrumentality of the state of Washington exercising essential governmental functions. The cooperative is a public body within the meaning of RCW 39.53.010.

(2)(a) The cooperative is activated when:

(i) The state treasurer completes a study that provides recommendations on staffing and operational needs for the cooperative to be administered by the Washington state housing finance commission. The state treasurer shall contract with a consultant with expertise

in developing detailed operating plans for financial institutions using an appropriation from the general fund to complete the study. The study must ensure that the administration of the cooperative does not interfere with the core mission of the Washington state housing finance commission;

(ii) An appropriation that is sufficient to capitalize the cooperative so that it can issue debt with a competitive rating is provided; and

(iii) Executed articles of activation in a form approved by the state finance committee are filed with the secretary of state.

(b) The cooperative is deemed to have been formed as of the date of filing articles of activation under (a)(iii) of this subsection. The articles of activation must be approved by the legislative authority of each of the member local or tribal governments that subsequently becomes a member. Each member local or tribal government must provide to the cooperative a contribution of an amount approved by the state finance committee, and the board may subsequently adjust the minimum contribution level for current and new members. Any amendments to the articles of activation must be filed with the secretary of state and will become effective on the date of filing.

(3) A duplicate of the original articles of activation and amended articles of activation must be filed with the department of financial institutions. The filing of amended articles of activation must include the text of each amendment adopted and the date of its adoption. The cooperative must also file the following with the department of financial institutions:

(a) The address of the location of the main office of the cooperative;

(b) The names and places of residence of the persons who are directors under this section;

(c) The name and place of residence of the executive director hired by the board in accordance with this section;

(d) Bylaws and regulations adopted and amended by the board under section 4 of this act; and

(e) Any other information the director of the department of financial institutions deems necessary to perform

a review of the funds placed with the cooperative and the accounts and transactions of the cooperative in carrying out the cooperative's duties, as provided in this section.

(4)(a) The operating board of the cooperative consists of nine directors. Terms of directors are four years, with half of the initial directors other than the initial chair serving two-year terms as determined by lot, with those positions being filled for four-year terms thereafter.

(b) Five member-appointed directors must be selected by a majority of the members of the cooperative. Member-appointed directors must be elected local or tribal government officials. Three public directors must be appointed by the governor and confirmed by the senate. The public directors must be residents of the state appointed by the governor on the basis of their interest and expertise in finance, accounting, budgeting, economic development, infrastructure planning, design, construction, or project management. The state treasurer shall serve as an ex officio director.

(c) One of the public members shall be appointed by the governor as chair of the board and shall serve as chair at the pleasure of the governor. The initial chair must serve a full four-year term. The cooperative may select from its membership such other officers of the cooperative as it deems appropriate, including without limitation a secretary and a treasurer.

(d) In the event of a vacancy on the board due to death, resignation, lack of qualification to serve as a director, or otherwise, a successor for the remainder of the unexpired term shall be selected in the same manner as the selection of the director whose position has become vacant. Any independent member of the cooperative may be removed by the governor for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless such notice and hearing are expressly waived in writing by the affected public member.

(e) The state treasurer may designate an employee to act on his or her behalf in all respects with regard to any matter to come before the cooperative. Such designation must be made in writing in such manner as is specified by the rules of the cooperative.

(f) A majority of the directors constitutes a quorum.

(g) The directors of the cooperative serve without compensation but are entitled to reimbursement, solely from the funds of the cooperative, for expenses incurred in the discharge of their duties under this chapter.

(5) The state finance committee serves as the oversight board of the cooperative. In that capacity, the state finance committee must carry out the responsibilities specified in this chapter. In addition, the state finance committee may at its discretion require independent audits of the accounts and transactions of the cooperative and the methods, procedures, and operation of the cooperative in carrying out its duties.

(6) The cooperative is a state agency subject to audit by the state auditor under chapter 43.09 RCW. In addition, the department of financial institutions may, at the discretion of the director of financial institutions, review the funds placed with the cooperative and the accounts and transactions of the cooperative in carrying out the cooperative's duties. Nothing in this subsection establishes that the cooperative is an institution or entity otherwise subject to the jurisdiction of the department of financial institutions.

(7) The board has the authority to hire and fire an executive director. The executive director shall be funded in the Washington state housing finance commission budget and shall administer and operate the Washington state public financial cooperative.

(8) The cooperative's administration and operation must be performed by employees of the Washington state housing finance commission, subject to the terms of one or more agreements between the cooperative and the commission concerning responsibilities of the commission's staff and compensation of the commission.

(9) The board must approve the budget of the cooperative annually.

(10) The board shall establish an internal audit committee.

(11) The cooperative shall have a goal of providing 35 percent of the amount it lends on an annual basis to support housing in low to moderate-income areas,

beginning five years after the cooperative has been activated as provided in this section.

(12) The cooperative must not be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America, or the United States department of the treasury.

(13) The cooperative must not be or constitute a bank, broker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers' law of the United States of America or this state.

(14) The cooperative is not a public depository for any purpose under chapter 39.58 RCW.

(15) The cooperative may not issue bonds in a manner that would create state debt.

NEW SECTION. **Sec. 4.** POWERS. The cooperative is authorized to:

(1) Sue and be sued in its own name, and plead and be impleaded;

(2) Adopt and alter an official seal;

(3) Make and enforce bylaws and regulations for the conduct of its business and for the use of its services and facilities;

(4) Engage such independent consultants, attorneys, and advisers as the cooperative deems necessary, useful, or convenient to accomplish its purposes, and, subject to section 5(6) of this act, contract with federal, state, and local or tribal governmental entities for services;

(5) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(6) Acquire, hold, use, and dispose of real or personal property, or any interest therein, in the name of the cooperative, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(7) Acquire, hold, use, and dispose of its income, revenues, funds, and money;

(8) Receive funds from state, local, or tribal governments, invest those moneys in lawful funds, including without limitation investments in loans made by the cooperative to borrowers;

(9) Open and maintain accounts in qualified public depositories; in the federal reserve bank of San Francisco, in the national cooperative bank, in a federal home loan bank, or in any other federal financing entity, and otherwise provide for the investment of any funds not required for immediate disbursement and provide for the selection of investments. The cooperative may participate in and use the federal reserve banks payments systems and account services;

(10) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, local, or tribal governments;

(11) Procure such insurance of such types, in such amounts, and from such insurers as the cooperative deems desirable including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;

(12) Accept gifts or grants from the United States, or from any governmental unit or person, firm, or corporation, carry out the terms or provisions or make agreements with respect to the gifts or grants, and do all things necessary, useful, desirable, or convenient in connection with procuring, accepting, or disposing of the gifts or grants;

(13) Apply for and accept grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used, and applied as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(14) Borrow money and issue its bonds consistent with this chapter and provide for and secure their payment, provide for the rights of bond owners and purchasers, and hold and dispose of any of its bonds;

(15) For the purpose of facilitating the financing of infrastructure and economic development activity in the state of Washington by the state or local or tribal governments, develop and conduct a program or programs to make loans to borrowers for project costs of

infrastructure and economic development projects. Those loans may be made from the proceeds of bonds issued by the cooperative, from funds held by the cooperative, and from other assets of the cooperative including contributions. The cooperative may develop and conduct a program that will stimulate and encourage the development of infrastructure and economic development projects by the infusion of financial assistance for state, local, or tribal governments;

(16) Establish guidelines for the engagement by state, local, or tribal governments in programs conducted by the cooperative under this chapter. The cooperative may prescribe the form of application or procedure required of a borrower for a loan, fix the terms and conditions of the loan or purchase, and enter into financing agreements and other financing documents with borrowers with respect to loans and other forms of financial assistance;

(17) Establish, revise, and collect such member contributions and such fees and charges as the cooperative deems necessary, useful, or convenient to accomplish its purposes. Members are authorized to make such contributions, and state, local, and tribal governments are authorized to pay such fees and charges;

(18) Make such expenditures as are appropriate for paying the administrative costs and expenses of the cooperative in carrying out the provisions of this chapter;

(19) Establish such reserves and special funds, including but not limited to debt service and sinking funds, reserve funds, project funds, and such other special funds as the cooperative deems necessary, useful, or convenient, and controls on funds to and from them, as the cooperative deems necessary, useful, or convenient to accomplish its purposes;

(20) Provide financial assistance and other forms of assistance to state, local, or tribal governments by providing information, advice, guidelines, forms, and procedures for implementing their financing programs;

(21) When authorized by not less than two-thirds of the members of the board, make distributions to members of amounts that the board deems surplus to the needs of the cooperative;

(22) Engage outside legal counsel, while receiving counsel on a routine basis from the office of the attorney general;

(23) Adopt rules concerning its exercise of the powers authorized by this chapter; and

(24) Exercise any other power the cooperative deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

NEW SECTION. **Sec. 5. FINANCING POWERS.** (1) Bonds issued under this chapter must be issued in the name of the cooperative. The bonds are not obligations of the state of Washington, may not create state debt, and are obligations only of the cooperative payable from the special fund or funds created by the cooperative for their payment. Such funds are not public moneys or funds of the state of Washington and at all times must be kept segregated and set apart from other funds.

(2) Bonds issued under this chapter must contain a recital on their face to the effect that payment of the principal of, interest on, and prepayment premium, if any, on the bonds, is a valid claim only as against the special fund or funds relating thereto, that neither the faith and credit nor the taxing power of the state or any municipal corporation, subdivision, or agency of the state, other than the cooperative as set forth in this chapter, is pledged to the payment of the principal of, interest on, and prepayment premium, if any, on the bonds. Contracts entered into by the cooperative must be entered into in the name of the cooperative and not in the name of the state of Washington. The obligations of the cooperative under the contracts must be obligations only of the cooperative and are not in any way obligations of the state of Washington.

(3) The cooperative's bonds must bear such date or dates, mature at such time or times, be in such denominations, be in such form, be registered or registrable in such manner, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, be payable at such time or times, and be sold in such manner and at such price or prices, as the cooperative determines.

The bonds shall be executed by the chair, by either its duly elected secretary or its treasurer, and by the trustee or paying agent if the cooperative determines to use a trustee or paying agent for the bonds. Execution of the bonds may be by manual or facsimile signature. The bonds of the cooperative may be negotiable instruments under Title 62A RCW.

(4) The bonds of the cooperative are subject to such terms, conditions, covenants, and protective provisions as are found necessary or desirable by the cooperative including, but not limited to, pledges of the cooperative's assets, setting aside of reserves, limitations on additional forms of indebtedness, and the mortgaging of all or any part of the cooperative's real or personal property, then owned or thereafter acquired, and other provisions the cooperative finds are necessary or desirable for the security of bond owners.

(5) Any bonds issued under this chapter may be secured by a financing document between the cooperative and the purchasers or owners of such bonds or between the cooperative and a corporate trustee appointed by the cooperative, which may be any trust company or bank having the powers of a trust company within or without the state. The financing document may pledge or assign, in whole or in part, the revenues and funds held or to be received by the cooperative, any present or future contract or other rights to receive the same, and the proceeds thereof. The financing document must contain such provisions for protecting and enforcing the rights, security, and remedies of bond owners as may be reasonable and proper including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event of default which may include the acceleration of maturities, restrictions on the individual rights of action by bond owners, and covenants setting forth duties of and limitations on the cooperative in conduct of its programs and the management of its property. In addition to other security provided in this chapter or otherwise by law, bonds issued by the cooperative may be secured, in whole or in part, by a pledge of the assets of the cooperative, including contributions of the members, or by financial guaranties, insurance or letters of credit issued to the

cooperative or a trustee or any other person, by any bank, trust company, insurance or surety company, or other financial institution, within or without the state. The cooperative may pledge or assign, in whole or in part, the revenues and funds held or to be received by the cooperative, any present or future contract or other rights to receive the same, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the cooperative to any issuer of such letter of credit of any payments made under such letter of credit. No individual member is liable to the cooperative, to the cooperative's trustee, or to any other person in amounts exceeding the member's contribution unless authorized by a majority of the members of the cooperative.

(6) The cooperative may enter into financing documents with borrowers regarding bonds issued by the cooperative that may provide for the payment by each borrower of amounts sufficient, together with other revenues available to the cooperative, if any, to:

(a) Pay the borrower's share of the fees established by the cooperative;

(b) Pay the principal of, premium, if any, and interest on outstanding bonds of the cooperative issued in respect of such borrower as the same shall become due and payable; and

(c) Create and maintain reserves required or provided for by the cooperative in connection with the issuance of such bonds. The payments are not subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state other than the cooperative.

(7) Any security interest created in the unexpended bond proceeds and in the special funds created by the cooperative must be immediately valid and binding against such moneys and any securities in which such moneys may be invested without cooperative or trustee possession thereof, and the security interest is prior to any party having any competing claim in such moneys or securities, without filing or recording pursuant to chapter 62A.9A RCW and regardless of whether the party has notice of the security interest.

(8) When issuing bonds, the cooperative may provide for the future issuance of additional bonds or parity

debt on a parity with outstanding bonds, and the terms and conditions of their issuance. The cooperative may refund or advance refund any bond of the cooperative in accordance with chapter 39.53 RCW or issue bonds with a subordinate lien against the fund or funds securing outstanding bonds. Bonds issued for refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the cooperative may enter into an agreement or agreements with a corporate trustee regarding the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of, the bonds to be redeemed.

(9) All money received by or on behalf of the cooperative with respect to this issuance of its bonds are trust funds to be held and applied solely as provided in this chapter. The cooperative, in lieu of receiving and applying the moneys itself, may enter into a trust agreement or indenture with one or more banks, including the national cooperative bank, or trust companies having the power and bank to conduct trust business in the state to:

(a) Perform all or any part of the obligations of the cooperative with respect to: (i) Bonds issued by it; (ii) the receipt, investment, and application of the proceeds of the bonds and money paid by a participant or available from other sources for the payment of the bonds; (iii) the enforcement of the obligations of a borrower in connection with the financing or refinancing of any project; and (iv) other matters relating to the exercise of the cooperative's powers under this chapter;

(b) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(c) Act on behalf of the cooperative or the owners of bonds of the cooperative for purposes of assuring or enforcing the payment of the bonds, when due.

(10) The cooperative may purchase its bonds with any of its funds available for the purchase. The cooperative may hold, pledge, cancel, or resell the bonds

subject to and in accordance with agreements with bond owners.

(11) The chair of the state finance cooperative or the chair's designee must be notified in advance of the issuance of bonds by the cooperative in order to promote the orderly offering of obligations in the financial markets.

(12) Neither the members of the cooperative, nor its directors or agents, nor employees of the Washington state housing finance commission, nor any person executing the bonds, is personally liable on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds.

(13) The cooperative may, out of any fund available therefor, purchase its bonds in the open market.

(14) Any owner of bonds of the cooperative issued under this chapter, and the trustee under any trust agreement or indenture, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder, except to the extent the rights given are restricted by the cooperative in any bond resolution or trust agreement or indenture authorizing the issuance of the bonds.

(15) The cooperative may charge for its costs and services in review or consideration of a proposed loan to a state, local, or tribal government, whether or not the loan is made.

(16) To the extent permitted under its contracts with the owners of bonds of the cooperative, the cooperative may consent to modification of the rate of interest, time and payment of installment of principal or interest, security, or any other term of a bond or note, loan to a state, local, or tribal government, contract, or agreement of any kind to which the cooperative authority is a party.

(17) The bonds of the cooperative are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations, and political subdivisions, all banks, eligible banking organizations, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan

associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control.

(18) This section provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter are controlling.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.190 RCW to read as follows:

Employees of the Washington state housing finance commission shall primarily administer and operate the Washington state public financial cooperative, as provided by section 3(8) of this act. The cooperative may consult with other state agencies at its discretion and without the approval of the Washington state housing finance commission.

Sec. 7. RCW 39.59.040 and 2016 c 152 s 11 are each amended to read as follows:

Any local government in the state of Washington may invest in:

(1) Bonds of the state of Washington and any local government in the state of Washington;

(2) General obligation bonds of a state and general obligation bonds of a local government of a state, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(3) Subject to compliance with RCW 39.56.030, registered warrants of a local government in the same county as the government making the investment;

(4) Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; or

United States dollar denominated bonds, notes, or other obligations that are issued or guaranteed by supranational institutions, provided that, at the time of investment, the institution has the United States government as its largest shareholder;

(5) Federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(6) Bankers' acceptances purchased on the secondary market;

(7) Commercial paper purchased in the secondary market, provided that any local government of the state of Washington that invests in such commercial paper must adhere to the investment policies and procedures adopted by the state investment board; (~~and~~)

(8) Corporate notes purchased on the secondary market, provided that any local government of the state of Washington that invests in such notes must adhere to the investment policies and procedures adopted by the state investment board; and

(9) A cooperative as defined in section 2 of this act and bonds issued by such cooperative.

Sec. 8. RCW 42.56.270 and 2020 c 238 s 11 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) 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;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as

required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, 43.--- (the new chapter created in section 15 of this act), and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) 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;

(6) 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;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) 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;

(9) 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;

(10) (a) 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 horse racing license submitted pursuant to RCW 67.16.260 (1) (b), marijuana producer, processor, or retailer license, liquor license,

gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter ~~((70.95N))~~ 70A.500 RCW to implement chapter ~~((70.95N))~~ 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to

result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW ~~((70.95N.190))~~ 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access,

submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter ~~((70.375))~~ 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW ~~((70.375.130))~~ 70A.515.130; and

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW.

Sec. 9. RCW 42.56.400 and 2020 c 243 s 4 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) 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;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from

chapter 43.--- RCW (the new chapter created in section 15 of this act), from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained or provided by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, 48.31B.035, and 48.31B.036, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7) (a) (ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040 (5) (b);

(21) Data, information, and documents that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730 (5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065;

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068;

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230;

(28) Documents, materials, or other information, including the corporate annual disclosure obtained by the insurance commissioner under RCW 48.195.020;

(29) Findings and orders disapproving acquisition of a trust institution under RCW 30B.53.100(3); and

(30) All claims data, including health care and financial related data received under RCW 41.05.890, received and held by the health care authority.

Sec. 10. RCW 42.56.400 and 2020 c 243 s 4 and 2020 c 240 s 9 are each reenacted and amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) 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;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from chapter 43.--- RCW (the new chapter created in section 15 of this act), from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained or provided by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, 48.31B.035, and 48.31B.036, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the

insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2)(b) and (c), and 48.74.120 to the extent such documents, materials, or

information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065;

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068;

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230;

(28) Documents, materials, or other information, including the corporate annual disclosure obtained by the insurance commissioner under RCW 48.195.020;

(29) Findings and orders disapproving acquisition of a trust institution under RCW 30B.53.100(3);

(30) All claims data, including health care and financial related data received under RCW 41.05.890, received and held by the health care authority; and

(31) Contracts not subject to public disclosure under RCW 48.200.040 and 48.43.731.

Sec. 11. RCW 43.10.067 and 1997 c 41 s 9 are each amended to read as follows:

No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general, except where it is provided by law to be the duty of the judge of any court or the prosecuting attorney of any county to employ or appoint such persons: PROVIDED, That RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the administration of the commission on judicial conduct, the state law library, the law school of the state university, the administration of the state bar act by the Washington State Bar Association, ((~~or~~)) the representation of an estate administered by the director of the department of revenue or the director's

designee pursuant to chapter 11.28 RCW, or the state public financial cooperative to the extent provided in section 4(22) of this act.

The authority granted by chapter 1.08 RCW, RCW 44.28.065, and 47.01.061 shall not be affected hereby.

Sec. 12. RCW 43.84.080 and 2016 c 152 s 18 are each amended to read as follows:

Wherever there is in any fund or in cash balances in the state treasury more than sufficient to meet the current expenditures properly payable therefrom, the state treasurer may invest or reinvest such portion of such funds or balances as the state treasurer deems expedient in the following:

(1) Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States or United States dollar denominated bonds, notes, or other obligations that are issued or guaranteed by supranational institutions, provided that, at the time of investment, the institution has the United States government as its largest shareholder;

(2) In state, county, municipal, or school district bonds, notes, or in warrants of taxing districts of the state. Such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations. The state treasurer may purchase such bonds or warrants directly from the taxing district or in the open market at such prices and upon such terms as it may determine, and may sell them at such times as it deems advisable;

(3) In federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(4) Bankers' acceptances purchased on the secondary market;

(5) Commercial paper purchased on the secondary market, provided that the state

treasurer adheres to the investment policies and procedures adopted by the state investment board;

(6) General obligation bonds of any state and general obligation bonds of local governments of other states, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency; (~~and~~)

(7) Corporate notes purchased on the secondary market, provided that the state treasurer adheres to the investment policies and procedures adopted by the state investment board; and

(8) Contributions to a cooperative as defined in section 2 of this act.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

NEW SECTION. Sec. 15. Sections 1 through 5 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 16. Section 9 of this act expires January 1, 2022.

NEW SECTION. Sec. 17. Section 10 of this act takes effect January 1, 2022."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmirck and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

ESSB 5190 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Providing health care workers with presumptive

benefits during a public health emergency.
Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Labor & Workplace Standards.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 50.04.294 and 2006 c 13 s 9 are each amended to read as follows:

With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining

agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; (~~(e)~~)

(c) Good faith errors in judgment or discretion; or

(d)(i) A health care worker who left work for the period of quarantine consistent with the recommended guidance from the United States centers for disease control and prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(ii) For purposes of this subsection, "health care worker" means an individual who worked at a health care facility as defined in RCW 9A.50.010, and was directly involved in the delivery of health services.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

Sec. 2. RCW 50.20.010 and 2021 c 2 s 8 are each amended to read as follows:

(1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) The individual has registered for work at, and thereafter has continued to

report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) The individual has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) The individual is able to work, and is available for work in any trade, occupation, profession, or business for which the individual is reasonably fitted.

(i) To be available for work, an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules.

(ii) Until June 30, 2021, an individual under quarantine or isolation, as defined by the department of health, as directed by a public health official during the novel coronavirus outbreak pursuant to the gubernatorial declaration of emergency of February 29, 2020, will meet the requirements of this subsection (1)(c) if the individual is able to perform, available to perform, and actively seeking work which can be performed while under quarantine or isolation.

(iii) For the purposes of this subsection, "customary trade practices" includes compliance with an electrical apprenticeship training program that includes a recognized referral system under apprenticeship program standards approved by the Washington state apprenticeship and training council;

(d) The individual has been unemployed for a waiting period of one week;

(e) The individual participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits.

(3)(a) For any weeks of unemployment insurance benefits when the one week waiting period is fully paid or fully reimbursed by the federal government, subsection (1)(d) of this section is waived.

(b) For any weeks of unemployment insurance benefits when the one week waiting period is partially paid or partially reimbursed by the federal government, the department may, by rule, elect to waive subsection (1)(d) of this section.

(4) During the weeks of a public health emergency, an unemployed individual may also meet the requirements of subsection (1)(c) of this section if:

(a) The unemployed individual is able to perform, available to perform, and actively seeking suitable work which can be performed for an employer from the individual's home; and

(b) The unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual:

(i) Was in an age category that is defined as high risk for the disease that

is the subject of the public health emergency by:

(A) The federal centers for disease control and prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides; or

(ii) Has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency by:

(A) The federal centers for disease control and prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides.

(5)(a) During the weeks of a public health emergency, an unemployed health care worker may also meet the requirements of subsection (1)(c) of this section if the unemployed health care worker described in RCW 50.20.050(3) and 50.29.021(1)(c)(iii) is able to perform, available to perform, and actively seeking suitable work which will commence after quarantine or which can be performed for an employer from the individual's home.

(b) For purposes of this subsection, "health care worker" means an individual who worked at a health care facility as defined in RCW 9A.50.010, and was directly involved in the delivery of health services.

Sec. 3. RCW 50.20.050 and 2021 c 2 s 10 are each amended to read as follows:

(1) With respect to separations that occur on or after September 6, 2009, and for separations that occur before April 4, 2021:

(a) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which the claimant left work voluntarily without good cause and thereafter for seven calendar weeks and until the claimant obtains bona fide work in employment covered by this title and earned wages in that employment equal to seven times the claimant's weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

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:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of ~~(the)~~ the claimant's training and experience.

(b) A claimant has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

- (i) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary 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:

(A) The claimant pursued all reasonable alternatives to preserve the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, 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; and

(B) The claimant terminated the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) 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;

(v) The claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The claimant's usual hours were reduced by twenty-five percent or more;

(vii) The claimant's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the claimant's job classification and labor market;

(viii) The claimant's worksite safety deteriorated, the claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The claimant left work because of illegal activities in the claimant's worksite, the claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The claimant's usual work was changed to work that violates the claimant's religious convictions or sincere moral beliefs; or

(xi) The claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the claimant begins active participation in the apprenticeship program.

(2) With respect to separations that occur on or after April 4, 2021:

(a) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which the claimant has left work voluntarily without good cause and thereafter for seven calendar weeks and until the claimant has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times the claimant's weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

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:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the claimant's training and experience.

(b) A claimant has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

(i) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary 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:

(A) The claimant made reasonable efforts to preserve the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, 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; and

(B) The claimant terminated the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) 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;

(v) The claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The claimant's usual hours were reduced by twenty-five percent or more;

(vii) The claimant's worksite changed, such change caused a material increase in

distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The claimant's worksite safety deteriorated, the claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The claimant left work because of illegal activities in the claimant's worksite, the claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The claimant's usual work was changed to work that violates the claimant's religious convictions or sincere moral beliefs;

(xi) The claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the claimant begins active participation in the apprenticeship program; or

(xii) During a public health emergency:

(A) The claimant was unable to perform the claimant's work for the employer from the claimant's home;

(B) The claimant is able to perform, available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and

(C) The claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual:

(I) Was in an age category that is defined as high risk for the disease that is the subject of the public health emergency by the federal centers for disease control and prevention, the department of health, or the equivalent agency in the state where the individual resides; or

(II) Has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the

subject of the public health emergency by the federal centers for disease control and prevention, the department of health, or the equivalent agency in the state where the individual resides.

(3) With respect to claims that occur on or after July 4, 2021, a claimant has good cause and is not disqualified from benefits under subsection (2)(a) of this section under the following circumstances, in addition to those listed under subsection (2)(b) of this section, if, during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and left work for the period of quarantine consistent with the recommended guidance from the United States centers for disease control and prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(4) Notwithstanding subsection (1) of this section, a claimant who was simultaneously employed in full-time employment and part-time employment and is otherwise eligible for benefits from the loss of the full-time employment shall not be disqualified from benefits because the claimant:

(a) Voluntarily quit the part-time employment before the loss of the full-time employment; and

(b) Did not have prior knowledge that the claimant would be separated from full-time employment.

Sec. 4. RCW 50.29.021 and 2021 c 2 s 16 are each amended to read as follows:

(1)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 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.

(b) Benefits paid to an eligible individual 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.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; (~~or~~)

(ii) RCW 50.20.050 (1)(b)(v) through (x) or (2)(b)(v) through (x); or

(iii) During a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(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, 50.44.030, and 50.50.030 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 individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (4) of this section.

(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) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b)(iv) or (xi) ~~((xi))~~, (2)(b)(iv), (xi), or (xii), or (3), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) Benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (2)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(h) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(i)(i) Benefits paid during the one week waiting period when the one week waiting period is fully paid or fully reimbursed by the federal government shall not be charged to the experience rating account of any contribution paying employer.

(ii) In the event the one week waiting period is partially paid or partially reimbursed by the federal government, the

department may, by rule, elect to not charge, in full or in part, benefits paid during the one week waiting period to the experience rating account of any contribution paying employer.

(j) Benefits paid for all weeks starting with the week ending March 28, 2020, and ending with the week ending May 30, 2020, shall not be charged to the experience rating account of any contribution paying employer.

(3)(a) A contribution paying base year employer, except employers as provided in subsection (5) of this section, 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 or gross 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, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster, or to the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the employer's plant, building, worksite, or other facility;

(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;

(v) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who qualified for two consecutive unemployment claims where wages were attributable to at least one employer who employed the individual in both base years. 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;

(vi) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035;

(vii) Worked for an employer for ~~((twenty))~~ 20 weeks or less, and was laid off at the end of temporary employment when that employee temporarily replaced a permanent employee receiving family or medical leave benefits under Title 50A RCW, and the layoff is due to the return of that permanent employee. This subsection (3) (a) (vii) applies to claims with an effective date on or after January 1, 2020; or

(viii) Was discharged because the individual was unable to satisfy a job prerequisite required by law or administrative rule.

(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.

(4) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(5) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b) (i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents.

NEW SECTION. Sec. 5. If any part of sections 1 through 4 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 sections 1 through 4 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 sections 1 through 4 of this act. Rules adopted under sections 1 through 4 of 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. 6.** A new section is added to chapter 51.32 RCW to read as follows:

(1) For health care employees who are covered under this title, there exists a prima facie presumption that any infectious or contagious diseases which are the subject of a public health emergency are occupational diseases under RCW 51.08.140 during a public health emergency.

(2) The health care employee must provide verification, as required by the department by rule, to the department or the self-insurer that the employee is in quarantine or has contracted the disease after exposure to the infectious or contagious disease that is the subject of the public health emergency.

(3) This presumption of occupational disease may be rebutted by clear and convincing evidence that:

(a) The exposure to the infectious or contagious disease which is the subject of the public health emergency occurred from other employment or nonemployment activities; or

(b) The employee was working from the employee's home or other location not under the employer's control, on leave from the employee's employment, or some combination thereof, for the period of quarantine outlined for the disease immediately prior to the employee's date of disease contraction or period of incapacity resulting from exposure to the disease which is the subject of the public health emergency.

(4) (a) RCW 51.32.090(7) does not apply to an occupational disease under this section except that no worker shall receive compensation for or during the day on which the occupational disease was contracted. For the purposes of this subsection (4), the day on which the occupational disease was contracted is whichever date occurs first of the following:

(i) The date that the worker first missed work due to symptoms of the infectious or contagious disease;

(ii) The date the worker was quarantined by a medical provider or public health official; or

(iii) The date the worker received a positive test result confirming contraction of the infectious or contagious disease.

(b) If leave or similar benefits are paid to the worker as part of a federal or state program for these employees during the public health emergency, total temporary disability benefits are not payable for the same period of time covered by this federal or state program.

(5) (a) When a determination involving the presumption established under this section is appealed to the board of industrial insurance appeals and the final decision allows the claim of benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer or retrospective rating group, the costs and fees are paid by the employer or retrospective rating group.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party. If the opposing party is a state fund employer or retrospective rating group, the costs and fees are paid by the employer or retrospective rating group.

(c) When reasonable costs of the appeal must be paid by the department as the opposing party in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

(6) Costs of claims allowed under this section shall not affect the experience rating of employers insured by the state fund. When calculating assessments due to the department for which total claim costs are the basis, self-insured employers and self-insurance hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct the cost of payments made under this section from the total of all claim costs reported.

(7) For purposes of this section:

(a) "Health care employee" means an employee of any health care facility or

other organization that provides emergency or medical services who has or likely has had direct contact with any person who has been exposed to or tested positive for any infectious or contagious diseases which are the subject of a public health emergency.

(b) "Health care facility" has the same meaning as in RCW 9A.50.010.

(c) "Public health emergency" means a declaration or order that covers the jurisdiction where the employee was working on the date of exposure concerning any dangerous, contagious, or infectious diseases, including a pandemic, and is issued as follows:

(i) The president of the United States has declared a national or regional emergency; or

(ii) The governor of Washington declared a state of emergency under RCW 43.06.010(12).

(8) The presumption in subsection (1) of this section takes effect on the day the national, regional, or state emergency is declared and continues until this declaration is revoked.

(9) The provisions of RCW 51.28.055 concerning time limits for filing claims for occupational disease apply to claims covered under this section.

Sec. 7. RCW 51.52.130 and 2007 c 490 s 4 are each amended to read as follows:

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court.

(a) In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may

be, in addition to the fee fixed for the services in the court.

(b) If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department.

(c) In the case where the employer or other person or persons aggrieved by the decision of the board appeal and the worker or beneficiary's right to relief is sustained, the attorneys' fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the person or persons filing the appeal.

(d) In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee and costs shall be payable as set forth under RCW 51.32.185.

(3) In an appeal to the superior or appellate court involving the presumption established under section 6 of this act, the attorneys' fees and costs shall be payable as set forth under section 6 of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 51.32 RCW to read as follows:

(1) Where an appealing party, other than the department or a self-insured employer, is ordered to pay attorneys' fees and costs and that party fails, refuses, or neglects to comply with the award, which has become final and is not subject to review or appeal, the director or any person entitled to compensation

under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which that party may be served with process.

(2) The court shall ensure compliance to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title.

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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Hoff; Jacobsen and Schmick.

MINORITY recommendation: Without recommendation. Signed by Representatives Rude and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5194 Prime Sponsor, Committee on Ways & Means: Providing for equity and access in the community and technical colleges. (REVISED FOR ENGROSSED: Concerning equity and access in higher education.) Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on College & Workforce Development.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** INTENT. The legislature recognizes that student completion rates for workforce training certification and degree programs at community and technical colleges are far lower than desirable to ensure that students may utilize the opportunities of postsecondary education to lift themselves and their families out of poverty and to meet our state's student achievement council road map goals, including for 70 percent of Washington residents to have a postsecondary certification or degree to meet workforce needs. The legislature recognizes that first-generation college-attending students, students with disabilities, and underrepresented minority students face far greater obstacles to apply, remain in school, and complete programs. This disparate impact greatly affects our state's commitment to equity.

The legislature recognizes that offering tuition financial support to first-generation and underrepresented minority students is necessary for students to enroll and attend college but must also be accompanied by proven supports for them to complete their degrees or workforce training programs.

The legislature recognizes that there are mentorship and advising programs based on strong evidence that have been proven to be successful in greatly increasing retention and degree or workforce training completion rates for first-generation students, underrepresented minority students, students with disabilities, and for all students at community and technical colleges. It is the legislature's intent that successful programs such as guided pathways be implemented at all community and technical colleges with the goal of doubling completion rates (as measured by completion in six years) for students in the next eight years. To accomplish this goal, the legislature intends to achieve full implementation of research-based programs to improve student outcomes, such as guided pathways. The legislature affirms that all students receiving Washington college grants, college bound scholarships, or federal Pell grants should receive the supports, including mentoring, that have been proven to increase completion rates.

The legislature further finds that research establishes that students from

underrepresented minorities are far more likely to complete degrees or workforce training certification programs if the faculty and staff of the college reflect the diversity of the student body. Therefore, the legislature intends for the state's community and technical colleges to develop and implement plans to increase faculty and staff diversity.

NEW SECTION. Sec. 2. FINDINGS. The legislature finds that there is a need to expand investments in community and technical colleges for the purpose of guaranteeing both equitable access and educational success for all residents of the state, particularly for students from communities of color and low-income communities. The legislature finds further that equality of opportunity for all students requires investments to support services that are critical to: The success of students of color and low-income students; provide systemwide equity initiatives intended to make community and technical college campuses welcoming, benevolent places; overcome the digital divide for all students; and provide qualified and available counseling throughout the community and technical college system. The legislature also finds that a more full-time, stable, fairly compensated, and diverse community and technical college faculty is necessary to enhance student success and to improve the mentoring available for a diverse student body. The legislature also finds that resources for student aid and workforce investment need to be adequate to meet the needs of all students in the state, particularly those from families of color and low-income families.

NEW SECTION. Sec. 3. DIVERSITY, EQUITY, AND INCLUSION STRATEGIC PLAN. (1) Beginning July 30, 2022, all community and technical colleges must submit, on a biennial basis, strategic plans to the state board for community and technical colleges for achieving diversity, equity, and inclusion of all races on their campuses.

(2) Colleges must create their strategic plans using an inclusive process of stakeholders including, but not limited to, classified staff, faculty, administrative exempt staff, students, and community organizations. Colleges are encouraged to use campus climate surveys to develop and update strategic plans for diversity, equity, and inclusion of all races.

(3) In addition to planning, each community and technical college shall include in its diversity program opportunities for students from historically marginalized communities to form student-based organizations, and to use community-based organizations, that permit students to work together to mentor and assist one another in navigating the educational system and to access trained mentors using evidence-based mentoring strategies.

(4) Each community and technical college shall establish a culturally appropriate outreach program. The outreach program may include communities of color, students with disabilities, neurodiverse communities, and low-income communities and be designed to assist potential students to understand the opportunities available in the community and technical college system. The outreach program may assist students with navigating the student aid system. Outreach programs may include partnerships with appropriate community-based organizations and use research and supports from the student achievement council.

(5) The state board for community and technical colleges shall develop a model faculty diversity program designed to provide for the retention and recruitment of faculty from all racial, ethnic, and cultural backgrounds. The faculty diversity program must be based on proven practices in diversity hiring processes.

(6) Each community and technical college shall conspicuously post on its website and include in the strategic plans, programs, and reports definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

NEW SECTION. Sec. 4. STUDENT SUCCESS SUPPORT PROGRAMS AND GUIDED PATHWAYS IMPLEMENTATION. (1) Subject to availability of amounts appropriated for this specific purpose, each community and technical college shall fully implement guided pathways. At a minimum, guided pathways implementation must include:

(a) Comprehensive mapping of student educational pathways with student end goals in mind. These must include transparent and clear career paths that are tightly aligned to the skills sought

by employers. Pathways must align course sequences to show clear paths for students, alignment with K-12 and university curriculum, and skill sets needed to enter the workforce;

(b) Dedicated advising and career counseling that helps students make informed program choices and develop completion plans. Advising services may include processes that help students explore possible career and educational choices while also emphasizing early planning. Advising must be culturally competent and with an emphasis on helping historically underserved, low-income, and students of color navigate their education;

(c) Data analysis of student learning as well as program and service outcomes. Data must be used to inform program development, the creation and further refinement of student pathways, and to provide opportunities for early intervention to help students succeed; and

(d) A student success support infrastructure using programs that the state board for community and technical colleges finds have been effective in closing equity gaps among historically underserved student populations and improve student completion rates. The student success support program must be based on research or documented evidence of success. In tandem with guided pathways implementation, student success support programs may include evidence-based elements such as:

(i) Equity competent academic advising services;

(ii) Equity competent career development programming;

(iii) Clear information regarding financial aid and financial literacy; and

(iv) Inclusive curriculum and teaching practices.

(2) Each community and technical college shall post on its website and include in the guided pathways program documentation and reports definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

(3)(a) The Washington state institute for public policy, in consultation with

the workforce education investment accountability and oversight board under RCW 28C.18.200, shall complete an evaluation of the guided pathways model. To the extent possible, the institute shall complete a preliminary report that evaluates the effect of the guided pathways model on early student outcomes including, but not limited to, student retention and persistence, college level English and math within the first year, and graduation and transfer rates. The preliminary report must review the implementation of the guided pathways model in Washington and any available evidence of the effectiveness of the guided pathways model. The preliminary report must be submitted by December 15, 2023.

(b) The Washington state institute for public policy shall complete a final report that evaluates the effect of the guided pathways on longer-term student outcomes including, but not limited to, degree completion, time to degree, transfer to four-year institutions, employment, and earnings, to the extent possible. The final report must be submitted by December 15, 2029.

(c) Both the preliminary and final reports must consider differences in outcomes by racial and ethnic subgroups and socioeconomic status.

NEW SECTION. Sec. 5. TENURE-TRACK FACULTY. (1) The legislature recognizes that student outcomes and success, especially for first generation, underserved students, may be significantly improved by increasing the number of full-time faculty at community and technical colleges.

(a) The legislature's goal is that community and technical colleges increase the numbers of full-time tenured positions by adding 200 new full-time tenure-track positions in the 2021-2023 fiscal biennium.

(b) This goal is best accomplished through converting part-time faculty positions to full-time tenure-track positions and by hiring new full-time faculty through processes identified in each college's diversity, equity, and inclusion of all races strategic plan described in section 3 of this act. If specific funding for the purpose of conversion assignments proposed in this section is not provided in the omnibus appropriations act, the conversion assignments proposed must be delayed

until such time as specific funding is provided.

(c) The college board must collect data and assess the impact of the 200 additional full-time tenure-track faculty on student completion rates. The college board must convene representatives of faculty, staff, and administration to report on outcomes as a result of increasing full-time tenure-track faculty. In consultation with representatives of faculty, staff, and administration, the college board must make recommendations about future steps to increase full-time tenure-track faculty that incorporate faculty diversity and historically underserved communities. The college board must report the results of its assessment, along with next step recommendations, to the legislature by December 15, 2023. The college board shall conspicuously post on its website and include in the report definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

(2) This section expires July 1, 2024.

NEW SECTION. Sec. 6. MENTAL HEALTH COUNSELOR PILOT PROGRAM. (1) Subject to the availability of amounts appropriated for this specific purpose, the college board shall administer a pilot program to increase student access to mental health counseling and services.

(2) The college board, in collaboration with the selection committee, shall select community or technical colleges to participate in the pilot program. At least half of the participating colleges must be located outside of the Puget Sound area. For purposes of this section, "Puget Sound area" means Snohomish, King, Pierce, and Thurston counties. Each participating college must receive a grant to implement one or more strategies to increase student access to mental health counseling and services, including substance use disorder counseling and services.

(3) (a) A selection committee consisting of the following shall assist with the application selection process:

(i) One community or technical college president;

(ii) One community or technical college vice president for student services or student instruction;

(iii) Two faculty counselors employed at a community or technical college; and

(iv) One community or technical college student.

(b) The selection committee may consult with representatives of an entity within a college or university that has expertise in suicide prevention and the department of health in developing selection criteria.

(4) Community and technical colleges wishing to participate in the pilot program shall apply to the college board. Applicants must identify opportunities for expanding on-campus mental health counseling and services. Applicants must also show a commitment to further develop partnerships by engaging external community providers, including those who provide crisis services and substance use disorder treatment and counseling. Applications that demonstrate plans to include one or more of the following strategies recommended by the community and technical college counselors task force must be prioritized:

(a) Improve equity, diversity, and inclusion of all races in counseling services, such as by diversifying the counselor workforce by adopting equity-centered recruiting, training, and retention practices or by providing equity training and awareness for all counselors;

(b) Meet mental health needs of students through an all-campus effort;

(c) Engage students to help increase mental health and counseling awareness and promote help-seeking behavior through student groups and other methods;

(d) Increase the visibility of counseling services on campus;

(e) Increase or expand external partnerships with community service providers;

(f) Adopt the use of telebehavioral health, especially in under resourced communities;

(g) Develop an assessment of counseling services to inform improvements and ensure counseling services are meeting student needs; or

(h) Implement counseling approaches grounded in theory that have evidence of being effective.

(5) Colleges selected to participate in the pilot program that use grant funding to hire additional mental health counselors must hire counselors who have specific graduate-level training for meeting the mental and behavioral health needs of students.

(6) Colleges selected to participate in the pilot program shall submit a joint report to the appropriate committees of the legislature and in accordance with RCW 43.01.036 by November 1, 2023. The report must include:

(a) Information on which colleges were selected for the pilot program, how much grant funding was received per college, and what strategies each implemented to increase student access to mental health counseling and services;

(b) Demographic data of students accessing mental health counseling and services, including those students who are considered underrepresented or traditionally have limited access to mental health counseling and services;

(c) Whether the mental health counseling and services provided are meeting the demand of students in terms of type and availability, and whether the various types of mental health counseling and services are being provided by community providers versus on-campus services;

(d) Information and data on the effectiveness, including cost-effectiveness, of each strategy used to increase student access to mental health counseling and services, including substance use disorder counseling and services, such as the number of additional students served, reduced wait times for counseling appointments, or other data that reflects expanded access; and

(e) Lessons learned and recommendations for improving student access to mental health counseling and services at community and technical colleges and to community providers, including whether there were any strategies implemented that proved more effective than others in increasing access.

(7) Colleges selected for the pilot program shall conspicuously post on their

websites and include in the report to the legislature the definitions for key terms including: Diversity, equity, inclusion, culturally competent, culturally appropriate, historically marginalized communities, communities of color, low-income communities, and community organizations.

(8) The pilot program expires July 1, 2025.

(9) This section expires January 1, 2026.

NEW SECTION. **Sec. 7.** MINIMUM COUNSELOR STANDARDS. (1) It is the intent of the legislature to provide clear minimum standards to ensure qualified faculty counselors while also providing flexibility to allow for differences in criteria required by hiring institutions. Within existing resources, and beginning September 1, 2021, the college board shall adopt rules regarding the minimum hiring standards for a faculty counselor. At a minimum, these must include:

(a) A graduate or professional degree in a related field;

(b) Completion of appropriate graduate coursework; and

(c) Standards established by the state board for community and technical colleges.

(2) The requirements and standards imposed through this section do not apply to an individual employed by a college district as a counselor before September 1, 2021. Counselors who began employment at one college district prior to September 1, 2021, and moved employment to a different college district after that date may carry the exemptions from the requirements and standards imposed through this section to their new place of employment.

Sec. 8. RCW 28B.96.010 and 2020 c 326 s 2 are each amended to read as follows:

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

(1) "Eligible student" means a student who:

(a) Is a resident student;

(b) Demonstrates financial need as defined in RCW 28B.92.030;

(c) Has indicated they will attend an institution of higher education or is making satisfactory progress in a program, as defined in rule by the office, at an institution of higher education;

(d) Fills out the Washington application for state financial aid; and

(e) Does not qualify for federally funded student financial aid because of their citizenship status.

(2) "Institution of higher education" has the same meaning as in RCW 28B.92.030.

(3) "Office" means the office of student financial assistance created in RCW 28B.76.090.

(4) "Participant" means an eligible student who has received an undocumented student support loan.

(5) "Resident student" means:

(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) Any student:

(i) Who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state;

(ii) 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

(iii) 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; or

(d) Any person((+

~~(i) Who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma;~~

~~(ii) Who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent;~~

~~(iii) Who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education; and~~

~~(iv) Who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses) who meets the requirements under RCW 28B.15.012(2)(e).~~

Sec. 9. RCW 28B.15.012 and 2020 c 232 s 1 are each amended to read as follows:

Whenever used in this chapter:

(1) The term "institution" shall mean a public university, college, or community or technical 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) Any person who has completed (~~the full senior year of high school~~) and obtained a high school diploma, (~~both at a Washington public high school or private high school approved under chapter 28A.195 RCW,~~) or a person who has received the equivalent of a diploma; (~~who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent,~~) who has continuously lived in the state of Washington (~~after receiving the diploma or its equivalent and until such time as~~) for at least a year before the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) Any person who has lived in Washington, primarily for purposes other than educational, for at least one year immediately before the date on which the person has enrolled in an institution, and who holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15)(E)(iii), (H)(i), or (L), or who holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under one of those subsections, or who, holding or having previously held such lawful nonimmigrant status as a principal or derivative, has filed an

application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a);

(g) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(h) A student who is on active military duty or a member of the Washington national guard who meets the following conditions:

(i) Entered service as a Washington resident;

(ii) Has maintained a Washington domicile; and

(iii) Is stationed out-of-state;

(i) A student who is the spouse or a dependent of a person defined in (g) of this subsection. If the person defined in (g) of this subsection is reassigned out-of-state, the student maintains the status as a resident student so long as the student is either:

(i) Admitted to an institution before the reassignment and enrolls in that institution for the term the student was admitted; or

(ii) Enrolled in an institution and remains continuously enrolled at the institution;

(j) A student who is the spouse or a dependent of a person defined in (h) of this subsection;

(k) A student who is eligible or entitled to transferred federal post-9/11 veterans educational assistance act of 2008 (38 U.S.C. Sec. 3301 et seq.) benefits based on the student's relationship as a spouse, former spouse, or child to an individual who is on active duty in the uniformed services;

(l) 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;

(m) A student who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service; is eligible for educational assistance benefits under Title 38 U.S.C.; and enters an institution of higher education in Washington within three years of the date of separation;

(n) A student who is on terminal, transition, or separation leave pending separation, or release from active duty,

from the uniformed services with any period of honorable service after at least ninety days of active duty service and is eligible for educational assistance benefits under Title 38 U.S.C.;

(o) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation;

(p) A student who is the spouse or child to an individual who has separated from the uniformed services with at least ten years of honorable service and at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation;

(q) A student who has separated from the uniformed services who was discharged due to the student's sexual orientation or gender identity or expression;

(r) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship with a deceased member of the uniformed services who died in the line of duty;

(s) A student who is entitled to federal vocational rehabilitation and employment services for veterans with service-connected disabilities under 38 U.S.C. Sec. 3102(a);

(t) A student who is defined as a covered individual in 38 U.S.C. Sec. 3679(c)(2) as it existed on July 28, 2019, or such subsequent date as the student achievement council may determine by rule;

(u) 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;

(v) 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;

(w) A student who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington; or

(x) A student who resides in Washington and is the spouse or a dependent of a person defined in (w) of this subsection. If the person defined in (w) of this subsection moves from Washington or is reassigned out of the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington, the student maintains the status as a resident student so long as the student resides in Washington and is either:

(i) Admitted to an institution before the reassignment and enrolls in that institution for the term the student was admitted; or

(ii) Enrolled in an institution and remains continuously enrolled at the institution.

(3)(a) A student who qualifies under subsection (2)(k), (m), (n), (o), (p), (q), (r), (s), or (t) of this section and who remains continuously enrolled at an institution of higher education shall retain resident student status.

(b) Nothing in subsection (2)(k), (m), (n), (o), (p), (q), (r), (s), or (t) of this section applies to students who have a dishonorable discharge from the uniformed services, or to students who are the spouse or child of an individual who has had a dishonorable discharge from the uniformed services, unless the student is receiving veterans administration educational assistance benefits.

(4) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of this section and RCW

28B.15.013. Except for students qualifying under subsection (2) (e) or (u) 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.76.685, 28B.76.690, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America, unless the person meets and complies with all applicable requirements in this section and RCW 28B.15.013 and is one of the following:

(i) A lawful permanent resident;

(ii) A temporary resident;

(iii) A person who holds "refugee-parolee," "conditional entrant," or U or T nonimmigrant status with the United States citizenship and immigration services;

(iv) A person who has been issued an employment authorization document by the United States citizenship and immigration services that is valid as of the date the person's residency status is determined;

(v) A person who has been granted deferred action for childhood arrival status before, on, or after June 7, 2018, regardless of whether the person is no longer or will no longer be granted deferred action for childhood arrival status due to the termination, suspension, or modification of the deferred action for childhood arrival program; or

(vi) A person who is otherwise permanently residing in the United States under color of law, including deferred action status.

(5) 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.

(6) 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 adopted by the student achievement council 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 council may require.

(7) The term "active military duty" means the person is serving on active duty in:

(a) The armed forces of the United States government; or

(b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces.

(8) The term "active duty service" means full-time duty, other than active duty for training, as a member of the uniformed services of the United States. Active duty service as a national guard member under Title 32 U.S.C. for the purpose of organizing, administering, recruiting, instructing, or training and active service under 32 U.S.C. Sec. 502(f) for the purpose of responding to a national emergency is recognized as active duty service.

(9) The term "uniformed services" is defined by Title 10 U.S.C.; subsequently structured and organized by Titles 14, 33, and 42 U.S.C.; consisting of the United States army, United States marine corps, United States navy, United States air force, United States coast guard, United States public health service commissioned corps, and the national oceanic and atmospheric administration commissioned officer corps.

NEW SECTION. Sec. 10. Sections 1 through 7 of this act are each added to chapter 28B.50 RCW.

NEW SECTION. Sec. 11. This act may be known and cited as the our colleges our future act of 2021."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Dye; Harris; Hoff and Schmick.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Jacobsen; Rude and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

2SSB 5195 Prime Sponsor, Committee on Ways & Means: Concerning opioid overdose reversal medication. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member and Jacobsen.

Referred to Committee on Rules for second reading.

March 31, 2021

ESSB 5203 Prime Sponsor, Committee on Health & Long Term Care: Producing, distributing, and purchasing generic prescription drugs. (REVISED FOR ENGROSSED: Producing, distributing, and purchasing generic prescription drugs and distribution or purchase of insulin.) Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 70.14 RCW to read as follows:

(1) (a) The authority may enter into partnership agreements with another state, a group of states, a state agency, a nonprofit organization, or any other entity to produce, distribute, or purchase generic prescription drugs and distribute and purchase insulin. Partnership agreements with governmental entities are exempt from competitive solicitation requirements in accordance with RCW 39.26.125(10). However, the authority must comply with state procurement laws related to competitive procurement when purchasing or entering into purchasing agreements with nongovernmental entities.

(b) The generic prescription drugs and insulin must be produced or distributed by a drug company or generic drug manufacturer that is registered with the United States food and drug administration.

(2) The authority shall only enter into partnerships, in consultation with other state agencies as necessary, to produce, distribute, or purchase a generic prescription drug or insulin at a price that results in savings to public and private purchasers and consumers.

(3) For generic prescription drugs and insulin that the authority has entered into a partnership under this section:

(a) State purchased health care programs must purchase the generic prescription drugs and insulin through the partnership, unless the state purchased health care program can obtain the generic prescription drug or insulin at a cost savings through another purchasing mechanism; and

(b) Local governments, private entities, health carriers, and others may choose to voluntarily purchase the generic prescription drugs and insulin from the authority as available quantities allow.

(4) All information and documents obtained or created under this section is exempt from disclosure under chapter 42.56 RCW.

(5) For purposes of this section, the following definitions apply:

(a) "Authority" means the health care authority.

(b) "Eligible prescription drug" means a prescription drug or biological product, as defined in 42 U.S.C. Sec. 262(i), that is not under patent.

(c) "Generic drug" means a drug that is approved pursuant to an application referencing an eligible prescription drug that is submitted under section 505(j) of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), or section 351(k) of the federal public health service act (42 U.S.C. Sec. 262).

(d) "Purchase" means the acquisition of generic drugs and insulin. "Purchase" includes, but is not limited to, entering into contracts with manufacturers on behalf of those dispensing drugs and other innovative purchasing strategies to help increase access for Washington citizens to the best price available for insulin and generic prescription drugs. This subsection should be interpreted broadly to provide the authority flexibility in how it procures generic drugs and insulin in order to obtain the best price.

(e) "State purchased health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, department of health, state health care authority, department of labor and industries, department of corrections, and department of veterans affairs. State purchased health care does not include prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW.

Sec. 2. RCW 70.14.060 and 2020 c 346 s 4 are each amended to read as follows:

(1) (a) The ~~((administrator [director]))~~ director of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. ~~((State))~~ Except as provided in section 1 of this act or exempted under (b) of this subsection, state purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of

pharmacies (~~(, unless exempted under (b) of this subsection))~~). The ~~((administrator [director]))~~ director shall not require any supplemental rebate offered to the health care authority by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The ~~((administrator [director]))~~ director shall explore joint purchasing opportunities with other states.

(b) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the ~~((administrator [director]))~~ director of the state health care authority that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and aggregate cost savings than would be realized through participation in the consortium.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, health carriers as provided in RCW 48.43.005, state purchased health care services from or through health carriers as provided in RCW 48.43.005, and for individuals who lack or are underinsured for prescription drug coverage. The ~~((administrator [director]))~~ director may set reasonable fees, including enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) The state health care authority is authorized to adopt rules implementing chapter 129, Laws of 2005.

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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member;

Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member MacEwen, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5214 Prime Sponsor, Committee on Ways & Means: Concerning economic assistance programs. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Housing, Human Services & Veterans.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 74.08A.010 and 2020 c 320 s 1 are each amended to read as follows:

(1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the adult family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall adopt regulations to apply the sixty-month time limit to households in which a parent is in the home and ineligible for temporary assistance for needy families. Any regulations shall be consistent with federal funding requirements.

(4) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of commerce, or the crime victims' compensation program of the department of labor and industries.

(5) (a) The department shall add to adopted rules related to temporary assistance for needy families time limit extensions, the following criteria by which the department shall exempt a recipient and the recipient's family from the application of subsection (1) of this section:

(i) By reason of hardship, including when (~~the~~):

(A) The recipient's family includes a child or youth who is without a fixed, regular, and adequate nighttime residence as described in the federal McKinney-Vento homeless assistance act (Title 42 U.S.C., chapter 119, subchapter VI, part B) as it existed on January 1, 2020; or

(B) The recipient received temporary assistance for needy families during a month on or after March 1, 2020, when Washington state's unemployment rate as published by the Washington employment security department was equal to or greater than seven percent, and the recipient is otherwise eligible for temporary assistance for needy families except that they have exceeded 60 months. The extension provided for under this subsection (5) (a) (i) (B) is equal to the number of months that the recipient received temporary assistance for needy families during a month after March 1, 2020, when the unemployment rate was equal to or greater than seven percent, and is applied sequentially to any other hardship extensions that may apply under this subsection (5) or in rule; or

(ii) If the family includes an individual who meets the family violence options of section 402(A) (7) of Title IVA of the federal social security act as amended by P.L. 104-193.

(b) Policies related to circumstances under which a recipient will be exempted from the application of subsection (1) or (3) of this section shall treat adults receiving benefits on their own behalf, and parents receiving benefits on behalf of their child similarly, unless required otherwise under federal law.

(6) The department shall not exempt a recipient and his or her family from the application of subsection (1) or (3) of this section until after the recipient has received fifty-two months of assistance under this chapter.

(7) The department shall provide transitional food assistance for a period

of five months to a household that ceases to receive temporary assistance for needy families assistance and is not in sanction status. If necessary, the department shall extend the household's basic food certification until the end of the transition period.

NEW SECTION. **Sec. 2.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

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

All families who have received temporary assistance for needy families since March 1, 2020, are eligible for the extension under RCW 74.08A.010(5)(a)(i)(B), regardless of whether they are current recipients. Eligible families shall only receive temporary assistance for needy families benefits that accrue after the effective date of this act.

NEW SECTION. **Sec. 4.** This act takes effect July 1, 2023, only if specific funding for extending the 60-month time limit through the 2021-2023 biennium, is provided by June 30, 2021, in the omnibus appropriations act. If specific funding for extending the 60-month time limit through the 2021-2023 biennium is not provided by June 30, 2021, in the omnibus appropriations act, this act takes effect 90 days after final adjournment of the legislative session in which it is enacted."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler; Dye; Jacobsen and Schmick.

MINORITY recommendation: Do not pass. Signed by Representative Rude.

Referred to Committee on Rules for second reading.

April 2, 2021

ESSB 5226 Prime Sponsor, Committee on Law & Justice: Concerning the suspension of licenses for traffic infractions. Reported by Committee on Transportation

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.63.060 and 2013 c 170 s 1 are each amended to read as follows:

(1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; ~~((that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial))~~ that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle registration;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e)(i) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(ii) One of the options must allow a person to admit responsibility for the infraction and attest that the person does not have the current ability to pay the infraction in full. The person must receive information on how to submit evidence of inability to pay, obtain a payment plan pursuant to section 4 of this act, and be informed that failure to pay or enter into a payment plan may result in collection action, including garnishment of wages or other assets;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses; and

(h) A statement that the person must respond to the notice as provided in this chapter within (~~(fifteen)~~) 30 days or the person's driver's license or driving privilege may be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances may result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle registration, until any penalties imposed pursuant to this chapter have been satisfied.

~~((3) (a) A form for a notice of traffic infraction printed after July 22, 2011, must include a statement that the person may be able to enter into a payment plan with the court under RCW 46.63.110.~~

~~(b) The forms for a notice of traffic infraction must include the changes in section 1, chapter 170, Laws of 2013 by July 1, 2015.)~~

Sec. 2. RCW 46.63.070 and 2011 c 372 s 3 are each amended to read as follows:

(1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within (~~(fifteen)~~) 30 days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response, unless the person selects the option attesting that the person does not have the current ability to pay the infraction in full. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5) (a) Except as provided in (b), (c), and (d) of this subsection, in hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring

findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.

(b) A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

(c) A person who is the holder of a commercial driver's license or who was operating a commercial motor vehicle at the time of the violation may not receive a deferral under this section.

(d) A person who commits negligent driving in the second degree with a vulnerable user victim may not receive a deferral for this infraction under this section.

(6) If any person issued a notice of traffic infraction:

(a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

Sec. 3. RCW 46.63.110 and 2019 c 467 s 4, 2019 c 403 s 13, 2019 c 181 s 1, and 2019 c 65 s 7 are each reenacted and amended to read as follows:

(1)(a) 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.

(b) The court may waive or remit any monetary penalty, fee, cost, assessment, or other monetary obligation associated with a traffic infraction unless the specific monetary obligation in question

is prohibited from being waived or remitted by state law.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) 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.

(4) 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.

(5) 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.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter, it is immediately payable and is enforceable as a civil judgment under Title 6 RCW. If the court determines(~~(, in its discretion,)~~) that a person is not able to pay a monetary obligation in full(~~(, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable)~~), the court shall enter into a payment plan with the person(~~(, unless the person has previously been granted a~~

payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation for civil enforcement until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the court has entered into a new time payment or community restitution agreement with the person. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privileges.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section. For those infractions

subject to suspension under RCW 46.20.289, the court shall notify the department of the person's delinquency, and the department shall suspend the person's driver's license or driving privileges.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments) in accordance with section 4 of this act and standards that may be set out in court rule.

(7) 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) 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;

(b) A fee of ten 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 Washington auto theft prevention authority account; and

(c) 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 traumatic brain injury account established in RCW 74.31.060.

(8)(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 or 46.61.212 shall be assessed an additional penalty of ~~((twenty dollars))~~ \$24. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community 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 (8) by participation in the court authorized community restitution program.

(b) ~~((Eight dollars and fifty cents))~~ \$12.50 of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining 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 follows: \$8.50 in the state general fund and \$4 in the driver licensing technology support account created under section 15 of this act. The moneys deposited into the driver licensing technology support account must be used to support information technology systems used by the department to communicate with the judicial information system, manage driving records, and implement court orders. 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.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the ~~((court may, at its discretion, enter into))~~ person may request a payment plan pursuant to section 4 of this act.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for

the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

(11) The additional monetary penalty for a violation of RCW 46.20.500 is not subject to assessments or fees provided under this section.

(12) The additional monetary fine for a violation of RCW 46.61.110, 46.61.145, 46.61.180, 46.61.185, 46.61.190, and 46.61.205 is not subject to assessments or fees provided under this section.

(13) The additional monetary penalties for a violation of RCW 46.61.165 are not subject to assessments or fees provided under this section.

NEW SECTION. Sec. 4. A new section is added to chapter 46.63 RCW to read as follows:

(1)(a) A person may request a payment plan at any time for the payment of any monetary penalty, fee, cost, assessment, or other monetary obligation associated with a traffic infraction. If the person does not have the ability to pay the monetary obligation in full, the person has not previously been granted a payment plan for the same monetary obligation, and the court has not authorized its collections agency to take civil legal enforcement action, the court shall enter into a payment plan with the individual. Where the court has authorized its collections agency to take civil legal enforcement action, the court may, at its discretion, enter into a payment plan.

(b) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(2) The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(3) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court may refer the unpaid monetary penalty, fee, cost,

assessment, or other monetary obligation for civil enforcement until all monetary obligations have been paid and court authorized community restitution has been completed, or until the court has entered into a new payment plan or community restitution agreement with the person.

(4) (a) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full, no sooner than 90 days from the date of the infraction the court may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid or until the person has entered into a payment plan under this section.

(b) If a person responded to a traffic infraction for a moving violation attesting that the person did not have the ability to pay the infraction in full, the court must attempt to enter into a payment plan with the person prior to referring the monetary obligation to a collections agency.

(5) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed \$10 per infraction or \$25 per payment plan, whichever is less.

(6) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(7) The court may modify a payment plan at any time.

(8) The court may require a person who fails to make payment as required under a payment plan to appear and provide evidence of ability to pay.

(9) For the purposes of this section, "payment plan" means a plan that requires reasonable payments based on the financial ability of the person to pay as determined by court rule.

Sec. 5. RCW 46.20.289 and 2019 c 467 s 2 are each amended to read as follows:

(1) Except for traffic violations committed under RCW 46.61.165, the department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a ~~((requested))~~ hearing for a moving violation, ~~((violated a written promise to appear in court for a notice of infraction for a moving violation, or has))~~ or failed to comply with the terms of a ~~((notice of traffic infraction,))~~ criminal complaint ~~((7))~~ or criminal citation for a moving violation ~~((7-07))~~.

(2) The department shall suspend all driving privileges of a person when the department receives notice from another state under Article IV of the nonresident violator compact under RCW 46.23.010 or from a jurisdiction that has entered into an agreement with the department under RCW 46.23.020, other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005.

(3) A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. ~~((In the case of failure to respond to a traffic infraction issued under RCW 46.55.105, the department shall suspend all driving privileges until the person provides evidence from the court that all penalties and restitution have been paid.))~~

(4) A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case ~~((has))~~ or cases have been adjudicated.

Sec. 6. RCW 46.20.291 and 2016 c 203 s 5 are each amended to read as follows:

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a ~~((requested))~~ hearing, ~~((violated a written promise to appear in court,))~~ or has failed to comply with the terms of a ~~((notice of traffic infraction,))~~ criminal complaint ~~((r))~~ or criminal citation for a moving violation, as provided in RCW 46.20.289;

(6) Is subject to suspension under RCW 46.20.305 or 9A.56.078;

(7) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.0921; or

(8) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320.

NEW SECTION. **Sec. 7.** A new section is added to chapter 46.20 RCW to read as follows:

(1) Whenever the official records of the department show that a person has committed a traffic infraction for a moving violation on three or more occasions within a one-year period, or on four or more occasions within a two-year period, the department must suspend the license of the driver for a period of 60 days and establish a period of probation for one calendar year to begin when the suspension ends. Prior to reinstatement of a license, the person must complete a safe driving course as recommended by the department. During the period of probation, the person must not be convicted of any additional traffic infractions for moving violations. Any traffic infraction for a moving violation committed during the period of probation

shall result in an additional 30-day suspension to run consecutively with any suspension already being served.

(2) When a person has committed a traffic infraction for a moving violation on two occasions within a one-year period or three occasions within a two-year period, the department shall send the person a notice that an additional infraction will result in suspension of the person's license for a period of 60 days.

(3) The department may not charge a reissue fee at the end of the term of suspension under this section.

(4) For purposes of this section, multiple traffic infractions issued during or as the result of a single traffic stop constitute one occasion.

Sec. 8. RCW 46.20.311 and 2020 c 330 s 7 are each amended to read as follows:

(1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law.

(b) Except for a suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(c) If the suspension is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the substance use disorder agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the substance use disorder agency required under RCW

46.61.524 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. The department may waive the requirement for written verification under this subsection if it determines to its satisfaction that a device previously verified as having been installed on a vehicle owned or operated by the person is still installed and functioning or as permitted by RCW 46.20.720(8). If, based upon notification from the interlock provider or otherwise, the department determines that an interlock required under RCW 46.20.720 is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(d) Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(e) (i) ~~(The)~~ Except as provided in section 7(3) of this act, the department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of seventy-five dollars.

(ii) Except as provided in subsection (4) of this section, if the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result

of administrative action under RCW 46.20.308, the reissue fee shall be one hundred seventy dollars.

(2) (a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b) (i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of seventy-five dollars.

(ii) Except as provided in subsection (4) of this section, if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred seventy dollars. If the revocation is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the substance use disorder agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the substance use disorder agency required under RCW 46.61.524 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon

written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person applying for a new license. The department may waive the requirement for written verification under this subsection if it determines to its satisfaction that a device previously verified as having been installed on a vehicle owned or operated by the person is still installed and functioning or as permitted by RCW 46.20.720(8). If, following issuance of a new license, the department determines, based upon notification from the interlock provider or otherwise, that an interlock required under RCW 46.20.720 is no longer functioning, the department shall suspend the person's license or privilege to drive until the department has received written verification from an interlock provider that a functioning interlock is installed.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of seventy-five dollars.

(b) Except as provided in subsection (4) of this section, if the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's

blood alcohol content, the reissue fee shall be one hundred seventy dollars.

(4) When the department reinstates a person's driver's license following a suspension, revocation, or denial under RCW 46.20.3101 or 46.61.5055, and the person is entitled to full day-for-day credit under RCW 46.20.3101(4) or 46.61.5055(9)(b)(ii) for an additional restriction arising from the same incident, the department shall impose no additional reissue fees under subsection (1)(e)(ii), (2)(b)(ii), or (3)(b) of this section associated with the additional restriction.

Sec. 9. RCW 46.20.342 and 2015 c 149 s 1 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be a habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is

guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. For the purposes of this subsection, a person is not considered to be eligible to reinstate his or her driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.212(~~(4)~~) (5), relating to reckless endangerment of emergency zone workers;

(ix) A conviction of RCW 46.61.500, relating to reckless driving;

(x) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(xi) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xii) A conviction of RCW 46.61.522, relating to vehicular assault;

(xiii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiv) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xvi) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;

(xvii) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xviii) An administrative action taken by the department under chapter 46.20 RCW;

(xix) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection; or

(xx) A finding that a person has committed a traffic infraction under RCW 46.61.526 and suspension of driving privileges pursuant to RCW 46.61.526 (4) (b) or (7) (a) (ii).

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because:

(i) ~~((the))~~ The person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program(~~(7)~~);

(ii) ~~((the))~~ The person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW(~~(7)~~);

(iii) ~~((the))~~ The person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents(~~(7)~~);

(iv) ~~((the))~~ The person has failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a ~~((requested))~~ hearing for a moving violation, ~~((violated a written promise to appear in court,))~~ or ~~((has))~~ failed to comply with the terms of a ~~((notice of traffic infraction))~~ criminal complaint or criminal citation for a moving

violation, as provided in RCW 46.20.289((~~7~~))(1);

(v) ((~~the~~)) The person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license((~~7~~));

(vi) ((~~the~~)) The person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation((~~7~~));

(vii) ((~~the~~)) The person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses((~~7~~)); or

(viii) ((~~the~~)) The person has been certified by the department of social and health services as a person who is not in compliance with a child support order as provided in RCW 74.20A.320, or any combination of (c)(i) through (viii) of this subsection, is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(d) For the purposes of this subsection, a person is not considered to be eligible to reinstate his or her driver's license or driving privilege if the person is eligible to obtain an ignition interlock driver's license but did not obtain such a license.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an

additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

Sec. 10. RCW 46.20.391 and 2012 c 82 s 2 are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide, vehicular assault, driving while under the influence of intoxicating liquor or any drug, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, may submit to the department an application for a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or ((~~pay a traffic ticket under~~)) respond pursuant to RCW 46.20.289; a violation of the financial responsibility laws under chapter 46.29 RCW; or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license.

(b) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation.

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) Within seven years immediately preceding the date of the offense that

gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first-class mail to the driver that the occupational driver's license shall be canceled. If at any time before the cancellation goes into effect the driver

submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

(4) A person aggrieved by the decision of the department on the application for an occupational or temporary restricted driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an occupational or temporary restricted driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose occupational or temporary restricted driver's license has been canceled under this section may reapply for a new occupational or temporary restricted driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

NEW SECTION. Sec. 11. A new section is added to chapter 46.20 RCW to read as follows:

(1) The department is authorized to administratively reinstate the license of a person suspended pursuant to RCW 46.20.289(1) prior to the effective date of this section because the person:

(a) Failed to respond to a notice of traffic infraction for a moving violation;

(b) Failed to appear at a requested hearing for a moving violation;

(c) Violated a written promise to appear in court for a notice of infraction for a moving violation; or

(d) Failed to comply with the terms of a notice of traffic infraction.

(2) No later than 90 days after the effective date of this section, the department shall:

(a) Take reasonable steps to publicize the availability of relief to reinstate a suspended license as provided in this section; and

(b) Create an online application process for persons whose licenses are suspended and may be eligible for reinstatement as provided in this section. The online application process shall allow a person to determine whether the person is eligible to have his or her license reinstated and explain the process for reinstatement. A reissue fee as provided in RCW 46.20.311 shall apply.

(3) A reissue fee as provided in RCW 46.20.311 shall apply to any license reinstated under this section.

Sec. 12. RCW 46.64.025 and 2017 c 336 s 11 are each amended to read as follows:

Whenever any person (~~(served with, or provided notice of, a traffic infraction or a traffic-related criminal complaint willfully)~~) fails to respond to a notice of traffic infraction for a moving violation, fails to appear at a ((requested)) hearing for a moving violation, or fails to comply with the terms of a ((notice of infraction for a moving violation or a traffic-related)) criminal complaint or criminal citation for a moving violation, the court with jurisdiction over the traffic infraction, or traffic-related criminal complaint or criminal citation shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear or comply is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated.

For the purposes of this section, "moving violation" is defined by rule pursuant to RCW 46.20.2891.

NEW SECTION. **Sec. 13.** A new section is added to chapter 46.20 RCW to read as follows:

(1) An additional \$1 fee shall be imposed on each application for an original or renewal of a regular driver's license, regular identicard, enhanced driver's license, or enhanced identicard. The entire amount of the fee shall be used to pay for processing costs for driver's license issuance and reinstatements, and information technology upgrades and the ongoing costs to maintain the driver's license and identicard record and issuance system.

(2) The department shall forward all funds accruing under this section to the state treasurer who shall deposit the moneys to the credit of the highway safety fund.

Sec. 14. RCW 2.68.040 and 2019 c 467 s 6, 2019 c 403 s 12, and 2019 c 65 s 6 are each reenacted and amended to read as follows:

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

(a) Pursuant to the authority of RCW 46.63.110(3), the sum of ten dollars to any penalty collected by a court pursuant to supreme court infraction rules for courts of limited jurisdiction;

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

(c) Pursuant to RCW 46.63.110(6), a ten-dollar assessment for each account for which a person requests a time payment schedule.

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

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

(4) This section does not apply to the additional monetary penalty under RCW 46.20.500.

(5) This section does not apply to the additional monetary fine under RCW

46.61.110, 46.61.145, 46.61.180,
46.61.185, 46.61.190, and 46.61.205.

March 31, 2021

(6) This section does not apply to the additional monetary penalties under RCW 46.61.165.

(7) In addition to any amount prescribed by rule under subsection (1)(a) of this section as an assessment on traffic infractions dedicated for the judicial information system, there shall be assessed \$2 on each traffic infraction. The additional \$2 shall be forwarded to the state treasurer for deposit in the driver licensing technology support account, created under section 15 of this act, to be used to support information technology systems used by the department of licensing to communicate with the judicial information system, manage driving records, and implement court orders.

NEW SECTION. Sec. 15. A new section is added to chapter 46.68 RCW to read as follows:

The driver licensing technology support account is created as a subaccount in the highway safety fund under RCW 46.68.060. Moneys in the subaccount may be spent only after appropriation. Expenditures from the subaccount may be used only for supporting information technology systems used by the department to communicate with the judicial information system, manage driving records, and implement court orders.

NEW SECTION. Sec. 16. This act takes effect January 1, 2023."

Correct the title.

Signed by Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry; Chapman; Duerr; Entenman; Goehner; Griffey; Hackney; Klicker; Lovick; Paul; Ramel; Riccelli; Slatter; Taylor; Valdez; Walsh and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Orcutt and Sutherland.

MINORITY recommendation: Without recommendation. Signed by Representatives Robertson, Assistant Ranking Minority Member; Dent and McCaslin.

Referred to Committee on Rules for second reading.

E2SSB 5227 Prime Sponsor, Committee on Ways & Means: Concerning diversity, equity, inclusion, and antiracism training and assessments at institutions of higher education. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on College & Workforce Development.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that a postsecondary credential such as a degree, apprenticeship, or certificate is increasingly necessary to obtain a job that offers a good salary and advancement opportunities and that increasing the number of students in Washington who obtain such a credential is essential to the state's economic success. The legislature also recognizes that equity gaps remain among postsecondary students and that those gaps particularly impact students from historically marginalized communities.

The legislature finds that developing and maintaining a culture of belonging and support for students, faculty, and staff at institutions of higher education is essential to student success, and that faculty and staff play a key role. The legislature therefore seeks to ensure that public institutions of higher education provide faculty and staff, as well as students, with training to give them tools to address matters related to antiracism, diversity, equity, and inclusion.

The legislature further finds it necessary to regularly analyze the impact of that training on the campus community and to identify any measures needed to increase diversity, equity, and inclusion. Accordingly, the legislature intends that each public institution of higher education assess the learning, working, and living environment on campus that students, faculty, and staff experience to better understand the evolving state of diversity, equity, and inclusion.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each institution of higher education must:

(a) Provide professional development, either existing or new, focused on diversity, equity, inclusion, and antiracism for faculty and staff. This program must be developed in partnership with the institution's administration, faculty, staff, and student leadership groups. Efforts must be made to ensure the program is developed and delivered by individuals with innate and acquired experience and expertise in the field of diversity, equity, and inclusion. The content framework for professional development must be posted on each institution's public website for parents and community members. The professional development must begin in the 2022-23 academic year;

(b) Create an evaluation for professional development participants. The evaluations must, at minimum, capture a participant's level of satisfaction with the professional development opportunity, the degree to which the learning objectives were achieved, and how the knowledge gained may be applied to their work;

(c) (i) Share completed evaluations of program participants annually with either the state board for community and technical colleges or an organization representing the presidents of the public four-year institutions of higher education, depending on the institution; and (ii) submit curriculum and other pertinent information regarding the program beginning July 1, 2023, and, subsequently, if there is a meaningful change or by request of the reporting entity.

(2) The purpose of each professional development program curriculum must be rooted in eliminating structural racism against all races and promoting diversity, equity, and inclusion while improving academic, social, and health and wellness outcomes for students from historically marginalized communities. Institutions of higher education may further develop a curriculum that is reflective of the needs of the campus community.

(3) (a) Beginning with the 2022-23 academic year, every new faculty and staff member at an institution of higher education must participate in the program, regardless of whether they are a full-time or part-time employee. All faculty and staff participating in the professional development program must complete an evaluation. Other faculty and

staff may participate in the professional development program as needed or required by their institution. Each institution must develop a goal of at least 80 percent of their total faculty and staff completing the professional development program every two years and report on their goal's progress in the report established in section 5 of this act. Each institution may determine how to show progress towards their goal. Part-time faculty and staff who are employed at more than one institution of higher education are only required to complete the professional development program at one institution if they provide proof of completion to their other institution of higher education employers to receive credit for participation.

(b) Beginning with the 2024-25 academic year, 35 percent of tenured faculty and 35 percent of administrators at each institution of higher education must complete the professional development program every two years, regardless of whether they are a full-time or part-time employee.

(4) The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education may conduct further analysis of the professional development programs through participant evaluation data, use of focus groups, or other methods to determine promising practices. The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education must post a list of model standards and promising practices for professional development on their public websites for parents and community members.

(5) The institutions of higher education shall adopt rules as necessary or appropriate for effecting the provisions of this section, not in conflict with this chapter, and in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) (a) The institutions of higher education as defined in RCW 28B.10.016 shall each conduct a campus climate assessment to understand the current

state of diversity, equity, and inclusion in the learning, working, and living environment on campus for students, faculty, and staff. The assessment shall occur, at minimum, every five years. Institutions of higher education shall use the results of the campus climate assessment to inform the professional development, established in section 2 of this act, and program, established in section 4 of this act. Institutions may use an existing campus climate assessment to meet this requirement.

(b) The state board for community and technical colleges shall develop a model campus climate assessment for the community and technical colleges that the colleges may use or modify to meet the requirements of this section.

(2) The design of an existing or new campus climate assessment must involve, at minimum, students, college and university diversity officers, faculty, and staff. The campus climate assessment must include, at minimum, an evaluation of student and employee attitudes and awareness of campus diversity, equity, and inclusion issues. The campus climate assessment may also include questions evaluating the prevalence of discrimination, sexual assault, harassment, and retaliation on and off campus, in addition to student, faculty, and staff knowledge of campus policies and procedures addressing discrimination, sexual assault, harassment, and retaliation. College and university diversity officers and students must be consulted in the development of recommendations.

(3) Institutions of higher education must, at minimum, conduct annual listening and feedback sessions for diversity, equity, and inclusion for the entire campus community during periods between campus climate assessments. Institutions of higher education must, to the maximum extent practicable, compensate students for their participation in the annual listening and feedback sessions.

(4) Beginning July 1, 2022, the institutions of higher education shall report findings or progress in completing their campus climate assessment and, when applicable, information on their listening and feedback sessions annually to either the state board for community and technical colleges or an organization representing the presidents of the public four-year institutions of higher

education. The institutions of higher education must also publish annually on the institution's public website the results of either the campus climate assessment or listening and feedback sessions.

(5) The state board for community and technical colleges may require colleges to repeat their campus climate assessment. An organization representing the presidents of the public four-year institutions of higher education may also request state universities, regional universities, and The Evergreen State College to repeat their campus climate assessment.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each institution of higher education must:

(a) Provide a program, either existing or new, on diversity, equity, inclusion, and antiracism to students beginning with the 2024-25 academic year. Institutions of higher education may expand the focus of its program to reflect the needs of the campus community. This program must be developed in partnership with the institution's administration, faculty, staff, and student leadership groups. Efforts should be made to ensure the program is developed and delivered by individuals with innate and acquired experience and expertise in the field of diversity, equity, and inclusion. The content framework for each program must be posted on each institution's public website for parents and community members; and

(b) Create an evaluation for program participants. The evaluation must, at minimum, capture a participant's level of satisfaction with the program and how they will apply the program to their education.

(2) The purpose of each program must be rooted in eliminating structural racism against all races and promoting diversity, equity, and inclusion while improving outcomes for students from historically marginalized communities. Institutions of higher education may further develop a curriculum that is reflective of the needs of the campus community.

(3) During the 2024-25 academic year, all degree-seeking students at institutions of higher education must

participate in the program, regardless of whether they are a full-time or part-time student. Beginning with the 2025-26 academic year, the program is only required for degree-seeking students who are new or have transferred to the institution and have not yet participated in a required diversity, equity, inclusion, and antiracism program at an institution of higher education. Students must be allowed to opt out of participation in the program if they self-attest to taking a diversity, equity, inclusion, and antiracism training at an institution of higher education within the previous five years.

(4) The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education may conduct further analysis of the programs, through participant evaluation data, use of focus groups, or other methods to determine promising practices. The state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education must post a list of model standards and promising practices for programs on their public websites for parents and community members.

(5) The institutions of higher education shall adopt rules as necessary or appropriate for effecting the provisions of this section, not in conflict with this chapter, and in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act.

(6) For purposes of this section, "student" or "students" does not include nonmatriculated students.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28B.10 RCW to read as follows:

By December 31, 2024, and biennially thereafter, the state board for community and technical colleges and an organization representing the presidents of the public four-year institutions of higher education shall each submit a report to the higher education committees of the legislature in accordance with RCW 43.01.036 for their respective institutions of higher education. The reports must include the following:

(1) Information on the professional development programs implemented by each institution of higher education,

including updates on progress towards meeting the goal outlined in section 1 of this act;

(2) A summary of results of the campus climate assessments and other relevant information received by the institutions of higher education; and

(3) By December 31, 2026, and biennially thereafter, the reports must also include information on the student diversity, equity, inclusion, and antiracism programs implemented by each institution of higher education.

NEW SECTION. **Sec. 6.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5237 Prime Sponsor, Committee on Ways & Means: Expanding accessible, affordable child care and early childhood development programs. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Children, Youth & Families.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and cited as the fair start for kids act.

NEW SECTION. **Sec. 2.** INTENT. (1) The legislature finds that high quality child care and early learning is critical to a child's success in school and life. The legislature recognizes that COVID-19 has devastated the existing child care industry, making it unduly burdensome for families to find care. The legislature recognizes that without immediate action to support child care providers, and without expanded access to affordable child care, especially infant and school-age care, parents will not be able to return to work while children lose valuable learning opportunities. In order to bolster a full economic recovery, the legislature finds that every child deserves a fair start.

(2) The legislature finds that access to affordable child care increases economic growth and labor force participation. The legislature further finds that an affordable, accessible system of high quality child care is necessary to the health of Washington's economy because employers benefit when parents have safe, stable, and appropriate care for their children. The legislature recognizes that too many working parents are forced to reduce their hours, decline promotional opportunities, or leave the workforce completely due to a lack of affordable and appropriate child care. The legislature finds that a report commissioned by the department of commerce in 2019 found that working parents in Washington forego \$14,000,000,000 each year directly due to child care scarcity. The legislature recognizes that this disproportionately impacts women in the workforce and that in September 2020 alone, 78,000 men left the workforce, compared to 600,000 women.

(3) The legislature recognizes that quality child care can be a stabilizing factor for children experiencing homelessness, and is a proven protective factor against the impacts of trauma they may experience. Access to child care is also a necessary support for families with young children in resolving homelessness and securing employment.

(4) The legislature finds that the scarcity of child care, exacerbated by COVID-19, most significantly impacts families furthest from opportunity. The legislature recognizes that there are

additional barriers to accessing this foundational support for immigrant communities and families whose first language is not English, families who have children with disabilities, rural communities, or other child care deserts. The legislature recognizes that high quality, inclusive child care and early learning programs have been shown to reduce the opportunity gap for low-income children and black, indigenous, and children of color while consistently improving outcomes for all children both inside and outside of the classroom.

(5) The legislature finds that without access to comprehensive, high quality prenatal to five services, children often enter kindergarten without the social-emotional, physical, cognitive, and language skills they need to be successful and fall behind their peers, facing compounding developmental challenges throughout their K-12 education. The legislature finds that cascading impacts of inaccessible child care and early learning programs create systemic barriers for children and their families that result in higher special education needs, greater likelihood of needing to repeat grades, increased child welfare and juvenile justice involvement, reduced high school graduation rates, limited postsecondary education attainment, and greater barriers to employment in adulthood.

(6) The legislature finds the vast majority of child care providers are small businesses and nonprofit organizations. In addition to adhering to federal, state, and local regulations to ensure healthy and safe environments for children, the legislature recognizes that child care providers must ensure their employees are adequately compensated and supported. However, the legislature acknowledges that the reduced staffing ratios for health and safety, additional cost of personal protective equipment and extra cleaning supplies, increased use of substitutes needed during COVID-19-related absences, and increased technology demands during school closures from the pandemic are further straining the viability of the child care business model in Washington state.

(7) The legislature finds that the health and stability of the early learning workforce is pivotal to any expansion of child care in Washington state. The legislature recognizes that

the child care workforce, predominantly comprised of women of color, is structurally afflicted by low wages, limited or no health care, and a severe lack of retirement benefits. The legislature further recognizes that the threat of COVID-19 compounds these underlying issues, forcing providers to navigate increased stress, anxiety, and behavioral issues all while risking their lives to care for children. The legislature recognizes that families, friends, and neighbors who provide care are a critical component of the child care system. The legislature finds that child care workers are essential and deserve to be compensated and benefited accordingly.

(8) Therefore, the legislature resolves to respond to the COVID-19 crisis by first stabilizing the child care industry and then expanding access to a comprehensive continuum of high quality early childhood development programs, including infant and school-age child care, preschool, parent and family supports, and prenatal to three services. The legislature recognizes this continuum as critical to meeting different families' needs and offering every child in Washington access to a fair start.

(9) The legislature recognizes the strengths that multilingual, diverse early learning providers and caregivers contribute to early learning across the state. Therefore, the legislature intends to expand language access services to create an inclusive early learning system that specifically supports underserved providers.

(10) The legislature intends to expand eligibility for existing child care and preschool programs to increase access. The legislature recognizes that expansion must be accompanied by an investment to make child care more affordable. Therefore, the legislature intends to eliminate copayments for low-income families and limit copayments for any family on subsidy to no more than seven percent of their income.

(11) The legislature further intends to stabilize, support, and grow the diverse early learning workforce by funding living wages and affordable health benefits while providing training, infant and early childhood mental health consultation, shared business services, and a variety of other supports that recognize the critical role

that early learning providers serve for all Washington children.

(12) The legislature intends to accelerate Washington's economic recovery from the devastating impacts of COVID-19 by dramatically expanding access to affordable, high quality child care and preschool, in order to get parents back to work and provide every child with a fair start.

PART I

INVESTING IN CHILD CARE AND EARLY LEARNING

NEW SECTION. **Sec. 101.** FAIR START FOR KIDS ACCOUNT. (1) The fair start for kids account is created in the state treasury. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may be used only for child care and early learning purposes.

NEW SECTION. **Sec. 102.** FAIR START FOR KIDS SPENDING GOALS AND STRATEGIES. (1) The spending goals and strategies for the fair start for kids account created under section 101 of this act include, but are not limited to:

(a) Increasing child care subsidy rates, with the goal of moving toward the full cost of providing high quality child care;

(b) Expanding health care coverage through state sponsorship of child care workers on the Washington health benefit exchange and providing consumer assistance through navigators, as well as any other expansions of access to affordable health care for staff in child care centers, family home providers, outdoor nature-based care, and early childhood education and assistance program staff;

(c) Increasing child care and early learning providers' compensation;

(d) Implementing the provisions of collective bargaining agreements for family child care providers negotiated pursuant to RCW 41.56.028;

(e) Supporting and expanding access to the early childhood education and assistance program to reach state-funded entitlement required in RCW 43.216.556;

(f) Making child care affordable for families;

(g) Providing resources and supports for family, friend, and neighbor caregivers that better reflect the full cost of care;

(h) Providing child care subsidies for families working to resolve homelessness;

(i) Providing professional development opportunities for child care and early learning providers;

(j) Delivering infant and early childhood mental health consultation services;

(k) Establishing prekindergarten through third grade systems coordinators at educational service districts;

(l) Supporting youth development programs serving children and youth ages birth through 12 including, but not limited to, expanded learning opportunities, mentoring, school-age child care, and wraparound supports or integrated student supports;

(m) Awarding grants and loans through the early learning facilities grant and loan program established under chapter 43.31 RCW;

(n) Funding special designations in the working connections child care programs, early childhood education and assistance programs, and birth to three early childhood education and assistance programs including designations established in sections 302, 304, 305, and 404 of this act;

(o) Supporting costs for transparent data collection and information technology systems operated by the department and department contractors, in particular, to ensure equitable systemic service provision and outcomes;

(p) Providing access to learning technology;

(q) Providing child care resource and referral services;

(r) Conducting quality rating and improvement system activities through the early achievers program;

(s) Expanding prenatal to three services and supports, including the birth to three early childhood education and assistance program and the in-home parent skill-based programs established in RCW 43.216.130;

(t) Building and delivering a family resource and referral linkage system;

(u) Allowing the exploration of options to provide regulatory relief and make licensing more affordable for child care providers;

(v) Administering comprehensive shared services hubs to allow the ongoing pooling and shared use of services by licensed or certified child care centers and family home providers;

(w) Training department staff to ensure consistent and equitable application of child care licensing and quality standards across the state including antibias and antiracist training;

(x) Providing incentives and supports for child care providers to become licensed;

(y) Studying and evaluating options to incentivize business participation in child care and early learning systems;

(z) Providing start-up grants to eligible organizations as described in RCW 43.31.575 who provide or commit to providing the early childhood education and assistance program or working connections child care. Start-up grants must be used for one-time start-up costs associated with the start-up of a new child care or early childhood education and assistance program site; and

(aa) Recognizing the benefits of the diverse workforce and facilitating communication in the three most commonly spoken languages by developing a language access plan that centers on equity and access for immigrants, multilingual providers, caregivers, and families.

(2) This section does not interfere with, impede, or in any way diminish the right of family child care providers to bargain collectively with the state through the exclusive bargaining representatives as provided for under RCW 41.56.028.

Sec. 103. RCW 43.88.055 and 2020 c 218 s 2 are each amended to read as follows:

LEGISLATIVE BALANCED BUDGET REQUIREMENT.

(1) The legislature must adopt a four-year balanced budget as follows:

(a) Beginning in the 2013-2015 fiscal biennium, the legislature shall enact a

balanced omnibus operating appropriations bill that leaves, in total, a positive ending fund balance in the general fund and related funds.

(b) Beginning in the 2013-2015 fiscal biennium, the projected maintenance level of the omnibus appropriations bill enacted by the legislature shall not exceed the available fiscal resources for the next ensuing fiscal biennium.

(2) For purposes of this section:

(a) "Available fiscal resources" means the beginning general fund and related fund balances and any fiscal resources estimated for the general fund and related funds, adjusted for enacted legislation, and with forecasted revenues adjusted to the greater of (i) the official general fund and related funds revenue forecast for the ensuing biennium, or (ii) the official general fund and related funds forecast for the second fiscal year of the current fiscal biennium, increased by 4.5 percent for each fiscal year of the ensuing biennium;

(b) "Projected maintenance level" means estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in that appropriations bill or mandated by other state or federal law, and the amount of any general fund moneys projected to be transferred to the budget stabilization account pursuant to Article VII, section 12 of the state Constitution;

(c) "Related funds," as used in this section, means the Washington opportunity pathways account, the workforce education investment account, the fair start for kids account, and the education legacy trust account.

(3) Subsection (1)(a) and (b) of this section does not apply to an appropriations bill that makes net reductions in general fund and related funds appropriations and is enacted between July 1st and February 15th of any fiscal year.

(4) Subsection (1)(b) of this section does not apply in a fiscal biennium in which money is appropriated from the budget stabilization account pursuant to Article VII, section 12(d)(ii) of the state Constitution.

Sec. 104. RCW 43.216.075 and 2020 c 262 s 4 are each amended to read as follows:

INVESTMENT ACCOUNTABILITY AND OVERSIGHT.

(1) The early learning advisory council is established to advise the department on statewide early learning issues that contribute to the ongoing efforts of building a comprehensive system of quality early learning programs and services for Washington's young children and families.

(2) The council shall work in conjunction with the department to ~~((assist))~~:

(a) Assist in policy development and implementation that ~~((assist the department in promoting))~~ promotes alignment of private and public sector actions, objectives, and resources, ~~((ensuring))~~ with the overall goal of promoting school readiness for all children;

(b) Provide recommendations annually to the governor and the legislature, beginning August 31, 2022, regarding the phased implementation of strategies and priorities identified in section 102 of this act;

(c) Maintain a focus on racial equity and inclusion in order to dismantle systemic racism at its core and contribute to statewide efforts to break the cycle of intergenerational poverty;

(d) Maintain a focus on inclusionary practices for children with disabilities;

(e) Partner with nonprofit organizations to collect and analyze data and measure progress; and

(f) Assist the department in monitoring and ensuring that the investments funded by the fair start for kids account created in section 101 of this act are designed to support the following objectives:

(i) Advance racial equity and strengthen families by recognizing and responding to the growing diversity of our state's population;

(ii) Promote access to affordable, high quality child care and early learning opportunities for all families, paying particular attention to the needs of rural and other underserved communities;

(iii) Promote kindergarten readiness by enhancing child development, including development of social-

emotional skills, and eliminating exclusionary admissions practices and disproportionate removals in child care and early learning programs; and

(iv) Contribute to efforts to strengthen and grow our state's economy by supporting working parents as well as stabilizing and supporting the child care and early learning workforce.

(3) In collaboration with the council, the department shall consult with its advisory groups and other interested stakeholders and shall submit a biennial report to the governor and legislature describing how the investments funded by the fair start for kids act have impacted the policy objectives stated in subsection (2)(f) of this section. The first report under this section is due September 15, 2023. The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall include critical partners in service delivery and reflect regional, racial, and cultural diversity to adequately represent the ((needs)) interests of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two 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.

(5) The council shall consist of members essential to coordinating services statewide prenatal through age ((five)) 12, as follows:

(a) In addition to being staffed and supported by the department, the governor shall appoint one representative from each of the following: The department of commerce and the department of health((~~the student achievement council, and the state board for community and technical colleges~~));

(b) One representative from the student achievement council, to be appointed by the student achievement council;

(c) The military spouse liaison created within the department of veterans affairs under RCW 43.60A.245;

(d) One representative from the state board for community and technical colleges, to be appointed by the state board for community and technical colleges;

(e) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

~~((c) The governor shall appoint leaders in early childhood education to represent critical service delivery and support sectors, with at least one individual representing each of the following:~~

~~((i) The head start state collaboration office director or the director's designee;~~

~~((ii) A representative of a head start, early head start, or migrant/seasonal head start program;~~

~~((iii) A representative of a local education agency;~~

~~((iv) A representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act;~~

~~((v) A representative of the early childhood education and assistance program;~~

~~((vi) A representative of licensed family day care providers;~~

~~((vii) A representative of child day care centers; and~~

~~((viii) A representative from the home visiting advisory committee established in RCW 43.216.130;~~

~~((d))~~ (f) Two members of the house of representatives, one from each caucus, to be appointed by the speaker of the house of representatives and two members of the senate, one from each caucus, to be appointed by the majority leader in the senate and the minority leader in the senate;

~~((e))~~ (g) Two parents, one of whom serves on the department's parent advisory group, to be appointed by the ((governor)) parent advisory group;

~~((f))~~ (h) One representative of the private-public partnership created in

RCW 43.216.065, to be appointed by the partnership board;

~~((g))~~ (i) One representative from the developmental disabilities community representing children and families involved in part C of the federal individuals with disabilities education act and one representative from the developmental disabilities community representing children and families involved in part B of the federal individuals with disabilities education act;

~~((h))~~ (j) Two representatives from early learning regional coalitions;

~~((i) Representatives)~~ (k) Up to five representatives of underserved communities who have a special expertise or interest in high quality early learning, one to be appointed by each of the following commissions:

(i) The Washington state commission on Asian Pacific American affairs established under chapter 43.117 RCW;

(ii) The Washington state commission on African American affairs established under chapter 43.113 RCW; ~~(and)~~

(iii) The Washington state commission on Hispanic affairs established under chapter 43.115 RCW;

(iv) The Washington state women's commission established under chapter 43.119 RCW; and

(v) The Washington state office of equity established under chapter 43.06D RCW;

~~((j))~~ (l) Two representatives designated by sovereign tribal governments, one of whom must be a representative of a tribal early childhood education assistance program or head start program;

~~((k))~~ (m) One representative from the Washington federation of independent schools;

~~((l))~~ (n) One representative from the Washington library association; ~~(and)~~

~~((m))~~ (o) One representative from a statewide advocacy coalition of organizations that focuses on early learning;

(p) One representative from an association representing statewide business interests, to be appointed by

the association and one representative from a regional business coalition;

(q) One representative of an advocacy organization for immigrants and refugees;

(r) One representative of an organization advocating for expanded learning opportunities and school-age child care programs;

(s) One representative from the largest union representing child care providers;

(t) A representative of a head start, early head start, or migrant and seasonal head start program, to be appointed by the head start collaboration office;

(u) A representative of educational service districts, to be appointed by a statewide association of educational service district board members;

(v) A provider responsible for programs under section 619 of the federal individuals with disabilities education act, to be appointed by the superintendent of public instruction;

(w) A representative of the state agency responsible for part C of the federal individuals with disabilities education act, to be appointed by the department;

(x) A representative of the early childhood education and assistance program, to be appointed by an association representing early childhood education and assistance programs;

(y) A representative of licensed family home providers, to be appointed by the largest union representing child care providers;

(z) A representative of child care centers, to be appointed by an association representing child care centers;

(aa) A representative from the home visiting advisory committee established in RCW 43.216.130, to be appointed by the committee;

(bb) An infant or early childhood mental health expert, to be appointed by the Barnard center for infant and early childhood mental health at the University of Washington;

(cc) A family, friend, and neighbor caregiver, to be appointed by the largest union representing child care providers;

(dd) A representative from prenatal to three services;

(ee) A pediatrician, to be appointed by the state chapter of the American academy of pediatrics; and

(ff) A representative of the statewide child care resource and referral organization, to be appointed by the statewide child care resource and referral organization.

(6) The council shall be cochaired by two members, to be elected by the council for two-year terms and not more than one cochair may represent a state agency.

(7) At the direction of the cochairs, the council may convene advisory groups, such as a parent caucus, to evaluate specific issues and report related findings and recommendations to the full council.

(8) The council shall appoint two members and stakeholders with expertise in early learning to sit on the technical working group created in section 2, chapter 234, Laws of 2010.

~~((9))~~ (9) Each member of the ~~((board))~~ council shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the ~~((board))~~ council in accordance with RCW 43.03.050 and 43.03.060.

~~((9))~~ (10)(a) The council shall convene an early achievers review subcommittee to provide feedback and guidance on strategies to improve the quality of instruction and environment for early learning and provide input and recommendations on the implementation and refinement of the early achievers program. The subcommittee shall at a minimum provide feedback and guidance to the department and the council on the following:

(i) Adequacy of data collection procedures;

(ii) Coaching and technical assistance standards;

(iii) Progress in reducing barriers to participation for low-income providers and providers from diverse cultural backgrounds, including a review of the early achievers program's rating tools, quality standard areas, and components, and how they are applied;

(iv) Strategies in response to data on the effectiveness of early achievers

program standards in relation to providers and children from diverse cultural backgrounds;

(v) Status of the life circumstance exemption protocols; ~~((and))~~

(vi) Analysis of early achievers program data trends; and

(vii) Other relevant early learning data including progress in serving students with disabilities ages birth to five and least restrictive environment data.

(b) The subcommittee must include consideration of cultural linguistic responsiveness when analyzing the areas for review required by (a) of this subsection.

(c) The subcommittee shall include representatives from child care centers, family child care, the early childhood education and assistance program, contractors for early achievers program technical assistance and coaching, tribal governments, the organization responsible for conducting early achievers program ratings, and parents of children participating in early learning programs, including working connections child care and early childhood education and assistance programs. The subcommittee shall include representatives from diverse cultural and linguistic backgrounds.

~~((10))~~ (11) The council shall convene a temporary licensing subcommittee to provide feedback and recommendations on improvement to the statewide licensing process. The subcommittee shall examine strategies to increase the number of licensed child care providers in the state, including meeting with prospective licensees to explain the licensure requirements and inspect and provide feedback on the physical space that is contemplated for licensure. The subcommittee shall develop model policies for licensed child care providers to implement licensing standards including, but not limited to, completing the child care and early learning licensing guidebook, to be made available to support providers with compliance. The subcommittee shall also develop recommendations regarding incentives and financial supports to help prospective providers navigate the licensing process. The subcommittee shall provide feedback and recommendations to the department of

children, youth, and families pursuant to this subsection (11) by December 1, 2022.

(12) The department shall provide staff support to the council.

Sec. 105. RCW 83.100.230 and 2019 c 415 s 990 are each amended to read as follows:

The education legacy trust 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 support of the common schools, and for expanding access to higher education through funding for new enrollments and financial aid, early learning and child care programs, and other educational improvement efforts. ~~((During the 2015-2017, 2017-2019, and 2019-2021 fiscal biennia appropriations from the account may be made for support of early learning programs. It is the intent of the legislature that this policy will be continued in subsequent fiscal biennia.))~~

NEW SECTION. Sec. 106. INFLATIONARY ADJUSTMENTS. Beginning July 1, 2023, and subject to the availability of amounts appropriated for this specific purpose, rates paid under sections 302, 305, and 404 of this act and RCW 43.216.578 must be adjusted every two years according to an inflationary increase. The inflationary increase must be calculated by applying the rate of the increase in the inflationary adjustment index to the rates established in sections 302, 305, and 404 of this act and RCW 43.216.578. Any funded inflationary increase must be included in the rate used to determine inflationary increases in subsequent years. For the purposes of this section, "inflationary adjustment index" means the implicit price deflator averaged for each fiscal year, using the official current base rate, compiled by the bureau of economic analysis, United States department of commerce.

PART II

EXPANDING ACCESS TO CHILD CARE AND EARLY LEARNING PROGRAMS

NEW SECTION. Sec. 201. WORKING CONNECTIONS CHILD CARE PROGRAM ELIGIBILITY AND COPAYMENT. (1) It is the intent of the legislature to increase working families' access to affordable, high quality child care and to support the expansion of the workforce to support businesses and the statewide economy.

(2) Beginning July 1, 2025, a family is eligible for working connections child care when the household's annual income is at or below 75 percent of the state median income adjusted for family size and:

(a) The child receiving care is: (i) Aged 13 years or younger; or (ii) aged 19 years or younger and has a verified special need according to department rule or is under court supervision; and

(b) The household meets all other program eligibility requirements.

(3) Beginning July 1, 2025, and subject to the availability of amounts appropriated for this specific purpose, a family is eligible for working connections child care when the household's annual income is above 75 percent of the state median income and is at or below 100 percent of the state median income adjusted for family size and:

(a) The child receiving care is: (i) Aged 13 years or younger; or (ii) aged 19 years or younger and has a verified special need according to department rule or is under court supervision; and

(b) The household meets all other program eligibility requirements.

(4) (a) The department must calculate a monthly copayment according to the following phased-in schedule:

Beginning date:	If the household's income is:	Then the household's copayment is:
Beginning July 1, 2021	At or below 36 percent of the state median income	Waived to the extent allowable under federal law
Beginning July 1, 2021	Above 36 percent and at or below 50 percent of the state median income	\$65

Beginning July 1, 2023	Above 50 percent and at or below 60 percent of the state median income	\$165
Beginning July 1, 2025	Above 60 percent and at or below 75 percent of the state median income	\$215

(b) The department shall adopt a copayment model based on available revenue for households with annual incomes above 75 percent of the state median income and at or below 100 percent of the state median income. The model must calculate a copayment for each household that is no greater than seven percent of the household's countable income within this income range.

(c) The department may adjust the copayment schedule to comply with federal law.

(5) The department must adopt rules, including phase-out eligibility, to implement this section.

Sec. 202. RCW 43.216.136 and 2020 c 279 s 2 are each amended to read as follows:

WORKING CONNECTIONS CHILD CARE FOR STUDENT PARENTS.

(1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. These policies shall focus on supporting school readiness for young learners. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures established by the department and the standards established in this section intended to promote stability, quality, and continuity of early care and education programming.

(2) As recommended by P.L. 113-186, authorizations for the working connections child care subsidy are

effective for twelve months beginning July 1, 2016 (~~(, unless an earlier date is provided in the omnibus appropriations act)~~).

(a) A household's 12-month authorization begins on the date that child care is expected to begin.

(b) If a newly eligible household does not begin care within 12 months of being determined eligible by the department, the household must reapply in order to qualify for subsidy.

(3) (a) The department shall establish and implement policies in the working connections child care program to allow eligibility for families with children who:

(i) In the last six months have:

(A) Received child protective services as defined and used by chapters 26.44 and 74.13 RCW;

(B) Received child welfare services as defined and used by chapter 74.13 RCW; or

(C) Received services through a family assessment response as defined and used by chapter 26.44 RCW;

(ii) Have been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(iii) Are residing with a biological parent or guardian.

(b) (~~(Children)~~) Families who are eligible for working connections child care pursuant to this subsection do not have to keep receiving services identified in this subsection to maintain twelve-month authorization.

(4) (a) Beginning (~~(August 1, 2020)~~) July 1, 2021, and subject to the availability of amounts appropriated for this specific purpose, the department may not require an applicant or consumer to meet work requirements as a condition of receiving working connections child care benefits when the applicant or consumer is (~~(+~~

~~(i) A single parent;~~

~~(ii) A) a full-time student of a community, technical, or tribal college (~~(+~~) and (~~(iii) Pursuing~~) is enrolled in: (i) A vocational education program that leads to a degree or certificate in a specific occupation (~~(+~~ not to result in a bachelor's or advanced degree));~~

(ii) An associate degree program; or

(iii) A registered apprenticeship program.

(b) An applicant or consumer is a full-time student for the purposes of this subsection if he or she meets the college's definition of a full-time student. ~~((The student must maintain passing grades and be in good standing pursuant to college attendance requirements.))~~

(c) Nothing in this subsection is intended to change how applicants or consumers are prioritized when applicants or consumers are placed on a waitlist for working connections child care benefits.

(d) Subject to the availability of amounts appropriated for this specific purpose, the department may extend the provisions of this subsection (4) to full-time students who are enrolled in a bachelor's degree program or applied baccalaureate degree program.

(5) (a) The department must extend the homeless grace period, as adopted in department rule as of January 1, 2020, from a four-month grace period to a twelve-month grace period.

(b) For the purposes of this section, "homeless" means being without a fixed, regular, and adequate nighttime residence as described in the federal McKinney-Vento homeless assistance act (42 U.S.C. Sec. 11434a) as it existed on January 1, 2020.

(6) For purposes of this section, "authorization" means a transaction created by the department that allows a child care provider to claim payment for care. The department may adjust an authorization based on a household's eligibility status.

NEW SECTION. Sec. 203. EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM INTENT. (1) The legislature finds that eligibility guidelines for the national school lunch program require free meals for children with household incomes at or below 130 percent of the federal poverty level and that this income level is approximately equivalent to 36 percent of the state median income for a household of three. The legislature further finds that eligibility guidelines require reduced-price meals for children with household incomes at or below 185 percent of the federal poverty

level and that this income level is approximately equivalent to 50 percent of the state median income for a household of three.

(2) Therefore, the legislature intends to raise the maximum family income for children entitled to enroll in the early childhood education and assistance program to 36 percent of the state median income beginning July 1, 2026. Beginning in the 2030-31 school year, the legislature intends to raise the maximum family income for children entitled to enroll in this program to 50 percent of the state median income. It is the intent of the legislature to standardize income eligibility levels for assistance programs in order to help families and social workers better understand the benefits for which families qualify and to simplify and align state systems wherever feasible.

(3) The legislature further intends to support educational service districts to help school districts partner with early childhood education and assistance program contractors and providers to expand access.

Sec. 204. RCW 43.216.505 and 2019 c 408 s 2 are each amended to read as follows:

EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM ENTITLEMENT ELIGIBILITY.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.216.500 through 43.216.559, 43.216.900, and 43.216.901.

(1) "Advisory committee" means the advisory committee under RCW 43.216.520.

(2) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department as meeting the minimum program rules adopted by the department to qualify under RCW 43.216.500 through 43.216.550, 43.216.900, and 43.216.901 and are designated as eligible for funding by the department under RCW 43.216.530 and 43.216.540.

(3) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(4) "Eligible child" means a three to five-year old child who is not age-

eligible for kindergarten, is not a participant in a federal or state program providing comprehensive services, and who:

(a) ~~Has a family ((income at or below one hundred ten percent of the federal poverty level, as published annually by the federal department of health and human services))~~ with financial need;

(b) Is experiencing homelessness;

(c) Has participated in early head start or a successor federal program providing comprehensive services for children from birth through two years of age, the early support for infants and toddlers program or received class C developmental services, the birth to three early childhood education and assistance program, or the early childhood intervention and prevention services program;

(d) Is eligible for special education due to disability under RCW 28A.155.020; (~~or~~

~~or~~) (e) Is Indian as defined in rule by the department after consultation and agreement with Washington state's federally recognized tribes pursuant to section 207 of this act and is at or below 100 percent of the state median income adjusted for family size; or

(f) Meets criteria under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Preference for enrollment in this group shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(5) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

(c) Further their education and training;

(d) Increase their ability to use needed services in the community;

(e) Increase their self-reliance; and

(f) Connect with culturally competent, disability positive therapists and supports where appropriate.

(6) "Experiencing homelessness" means a child without a fixed, regular, and adequate nighttime residence as described in the federal McKinney-Vento homeless assistance act (42 U.S.C., Chapter 119, Subchapter VI, Part B) as it existed on January 1, 2021.

(7) "Family with financial need" means families with incomes at or below 36 percent of the state median income adjusted for family size until the 2030-31 school year. Beginning in the 2030-31 school year, "family with financial need" means families with incomes at or below 50 percent of the state median income adjusted for family size.

Sec. 205. RCW 43.216.512 and 2019 c 409 s 2 are each amended to read as follows:

EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM EXPANDED ENROLLMENT.

(1) The department shall adopt rules that allow the enrollment of children in the early childhood education and assistance program, as space is available, if the number of such children equals not more than ~~((twenty-five))~~ 25 percent of total statewide enrollment, when the child is not eligible under RCW 43.216.505 and whose family income level is ~~(+)~~

~~(a) Above one hundred ten percent but less than or equal to one hundred thirty percent of the federal poverty level; or~~

~~(b) Above one hundred thirty percent but less than or equal to two hundred percent of the federal poverty level if)~~ above 36 percent of the state median income but at or below 50 percent of the state median income adjusted for family size and the child meets at least one of the risk factor criterion described in subsection (2) of this section.

(2) Children enrolled in the early childhood education and assistance program pursuant to ~~((subsection (1)(b) or (c)))~~ this section must be prioritized for available funded slots according to a prioritization system adopted in rule by the department that considers risk factors that have a disproportionate effect on kindergarten readiness and school performance, including:

(a) Family income as a percent of the ((federal poverty level)) state median income;

(b) ~~((Homelessness;~~

~~(e))~~ Child welfare system involvement;

~~((d) Developmental delay or disability that does not meet the eligibility criteria for special education described in RCW 28A.155.020)~~

~~(c) Eligible for services under part C of the federal individuals with disabilities education act but not eligible for services under part B of the federal individuals with disabilities education act;~~

~~((e))~~ (d) Domestic violence;

~~((f))~~ (e) English as a second language;

~~((g))~~ (f) Expulsion from an early learning setting;

~~((h))~~ (g) A parent who is incarcerated;

~~((i))~~ (h) A parent with a ~~((substance use disorder or mental))~~ behavioral health treatment need; and

~~((j))~~ (i) Other risk factors determined by the department to be linked by research to school performance.

~~(3) ((The department shall adopt rules that allow a child to enroll in the early childhood education and assistance program, as space is available, when the child is not eligible under RCW 43.216.505 and the child turns three years old at any time during the school year when the child:~~

~~(a) Has a family income at or below two hundred percent of the federal poverty level or meets at least one risk factor criterion adopted by the department in rule; and~~

~~(b) Has received services from or participated in;~~

~~(i) The early support for infants and toddlers program;~~

~~(ii) The early head start or a successor federal program providing comprehensive services for children from birth through two years of age; or~~

~~(iii) The birth to three early childhood education and assistance program, if such a program is established.~~

~~(4))~~ Children enrolled in the early childhood education and assistance program under this section are not considered eligible children as defined in RCW 43.216.505 and are not considered

to be part of the state-funded entitlement required in RCW 43.216.556.

(4) This section expires August 1, 2030.

NEW SECTION. Sec. 206. EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM EARLY ENTRY. (1) The department shall adopt rules that allow a child to enroll in the early childhood education and assistance program, as space is available, when the child is not eligible under RCW 43.216.505 and the child turns three years old at any time during the school year when the child:

(a) Has a family income at or below 50 percent of the state median income or meets at least one risk factor criterion adopted by the department in rule; and

(b) Has received services from or participated in:

(i) The early head start or a successor federal program providing comprehensive services for children from birth through two years of age;

(ii) The early support for infants and toddlers program or received class C developmental services;

(iii) The birth to three early childhood education and assistance program; or

(iv) The early childhood intervention and prevention services program.

(2) Children enrolled in the early childhood education and assistance program under this section are not eligible children as defined in RCW 43.216.505 and are not part of the state-funded entitlement required in RCW 43.216.556.

NEW SECTION. Sec. 207. INDIAN CHILD DEFINITION. (1) The department must consult, and obtain the advice and consent of, the governing bodies of the state's federally recognized tribes in developing an agreed-upon definition of the term "Indian" for the purposes of RCW 43.216.505 and, by July 1, 2024, must adopt the definition in rule.

(2) This section expires December 1, 2030.

Sec. 208. RCW 43.216.556 and 2019 c 408 s 3 are each amended to read as follows:

(1) Funding for the program of early learning established under this chapter

must be appropriated to the department. The department shall distribute funding to approved early childhood education and assistance program contractors on the basis of eligible children enrolled.

(2) The program shall be implemented in phases, so that full implementation is achieved in the ~~((2022-23))~~ 2026-27 school year.

(3) Funding shall continue to be phased in each year until full statewide implementation of the early learning program is achieved in the ~~((2022-23))~~ 2026-27 school year, at which time any eligible child is entitled to be enrolled in the program. Entitlement under this section is voluntary enrollment.

(4) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers.

PART III

SUPPORTING CHILD CARE AND EARLY LEARNING PROVIDERS

Sec. 301. RCW 43.216.749 and 2019 c 368 s 7 are each amended to read as follows:

CHILD CARE SUBSIDY RATES.

(1) ~~((By January 1, 2025, the department of children, youth, and families must))~~ It is the intent of the legislature to systemically increase child care subsidy rates over time until rates are equal to the full cost of providing high quality child care.

(2) Beginning July 1, 2021, child care subsidy base rates must achieve the 85th percentile of market for licensed or certified child care providers. The state and the exclusive representative for family child care providers must enter bargaining over the implementation of the subsidy rate increase under this subsection.

(3) (a) The department shall build upon the work of the child care collaborative task force to develop and implement a child care cost estimate model and use the completed child care cost model ~~((developed under RCW 43.330.527 to determine child care subsidy rates.~~

~~((2) This section expires January 30, 2025))~~ to recommend subsidy rates at levels that are sufficient to compensate licensed or certified child care providers for the full costs of providing high quality child care. The department shall consider:

(i) Adjusting rates to reflect cost of living such as area median income, cost of living by zip code, and grouping by categories such as rural, suburban, or urban; and

(ii) Incorporating the rate model for nonstandard child care hours developed under section 306 of this act.

(b) The department shall build upon the work of the child care collaborative task force to evaluate options to support access to affordable health care insurance coverage for licensed or certified child care providers.

(4) This section does not interfere with, impede, or in any way diminish the right of family child care providers to bargain collectively with the state through the exclusive bargaining representatives as provided for under RCW 41.56.028.

NEW SECTION. Sec. 302. EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM RATES. (1) For the 2021-22 school year, rates for the early childhood education and assistance program must be set at a level at least 10 percent higher than the rates established in section 225, chapter 415, Laws of 2019.

(2) It is the intent of the legislature that rate increases shall be informed by the department's 2020 early childhood education and assistance program rate study.

(3) This section expires June 30, 2027.

NEW SECTION. Sec. 303. COMPLEX NEEDS FUNDS. (1) The department shall administer two complex needs funds to promote inclusive, least restrictive environments and to support contractors and providers serving children who have developmental delays, disabilities, behavioral needs, or other unique needs. The department shall work collaboratively with the office of the superintendent of public instruction and providers so that the funds best serve the children. One fund must support early childhood education and assistance

program contractors and providers and birth to three early childhood education and assistance program contractors and providers, and one fund must support licensed or certified child care providers and license-exempt child care programs.

(2) Support may include staffing, programming, therapeutic services, and equipment or technology support. Additional support may include activities to assist families with children expelled or at risk of expulsion from child care, and to help families transition in and out of child care.

NEW SECTION. **Sec. 304.** TRAUMA-INFORMED CARE SUPPORTS. (1) Beginning July 1, 2022, the department shall provide supports to aid eligible providers in providing trauma-informed care. Trauma-informed care supports may be used by eligible providers for the following purposes:

(a) Additional compensation for individual staff who have an infant and early childhood mental health or other child development specialty credential;

(b) Trauma-informed professional development and training;

(c) The purchase of screening tools and assessment materials;

(d) Supportive services for children with complex needs that are offered as fee-for-service within local communities; or

(e) Other related expenses.

(2) The department must adopt rules to implement this section.

(3) For the purposes of this section, "eligible provider" means: (a) An employee or owner of a licensed or certified child care center or outdoor nature-based care accepting state subsidy; (b) an employee or owner of a licensed family home provider accepting state subsidy; (c) a contractor or provider of the early childhood education and assistance program or birth to three early childhood education and assistance program; (d) a license-exempt child care program; or (e) an early achievers coach.

NEW SECTION. **Sec. 305.** DUAL LANGUAGE RATE ENHANCEMENT. (1) Beginning July 1, 2022, the department shall establish a dual language designation and provide subsidy rate enhancements or site-specific grants for licensed or certified

child care providers who are accepting state subsidy; early childhood education and assistance program contractors; or birth to three early childhood education and assistance program contractors. It is the intent of the legislature to allow uses of the rate enhancements or site-specific grants to include increased wages for individual staff who provide bilingual instruction, professional development training, the purchase of dual language and culturally appropriate curricula and accompanying training programs, instructional materials, or other related expenses.

(2) The department must consult with a culturally and linguistically diverse stakeholder advisory group to develop criteria for the dual language designation.

(3) The department must adopt rules to implement this section.

NEW SECTION. **Sec. 306.** NONSTANDARD HOURS RATE MODEL. (1) In order to expand the supply of critically needed after-hours care to meet the needs of parents and caregivers and a round-the-clock economy, the department of children, youth, and families, in consultation with diverse stakeholders, must develop a rate model for nonstandard child care hours and submit the model to the governor and the appropriate committees of the legislature by January 1, 2022.

(2) This section expires June 30, 2022.

NEW SECTION. **Sec. 307.** EARLY CHILDHOOD EQUITY GRANTS. (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall distribute early childhood equity grants to eligible applicants. Eligible applicants include play and learn groups, licensed or certified child care centers and family home providers, license-exempt child care programs, and early childhood education and assistance program contractors. The equity grants are intended to serve as a step toward expanding access to early learning statewide and transforming Washington's early learning system to make it more inclusive and equitable. The department shall administer the early childhood equity grants to support inclusive and culturally and linguistically specific early learning and early childhood and parent support programs across the state.

(2) The department must conduct an equitable process to prioritize grant

applications for early childhood equity grant assistance. An eligible applicant may receive an early childhood equity grant once every two years. When conducting the equitable grant process, the department must:

(a) Solicit project applications from a racially and geographically diverse pool of eligible applicants statewide;

(b) Provide application materials in the five most commonly spoken languages in the state and broadly communicate using a variety of strategies to reach diverse communities;

(c) Require applicants to demonstrate their proposed uses of early childhood equity grant funds to incorporate either inclusive practices or culturally and linguistically supportive and relevant practices, or both, into early learning program design, delivery, education, training, and evaluation; and

(d) Provide technical assistance to any applicant who needs it.

NEW SECTION. Sec. 308. A new section is added to chapter 43.330 RCW to read as follows:

EMPLOYER-SUPPORTED CHILD CARE.

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, in collaboration with the department of children, youth, and families, shall provide or contract to provide remote or in-person technical assistance to employers interested in supporting their employees' access to high quality child care.

(2) Technical assistance may include guidance related to:

(a) Operating a licensed child care center at or near the workplace for the benefit of employees;

(b) Financing and construction of a licensed child care center at or near the workplace for the benefit of employees;

(c) Providing financial assistance to employees for licensed or certified child care providers and license-exempt child care program expenses;

(d) Encouraging access and support for low-wage employees;

(e) Sponsoring dependent care flexible spending accounts for employees; and

(f) Developing a "bring your infant to work" program and other family-friendly work policies for employees.

NEW SECTION. Sec. 309. INFANT AND EARLY CHILDHOOD MENTAL HEALTH CONSULTATION. (1) The department shall administer or contract for infant and early childhood mental health consultation services to child care providers and early learning providers participating in the early achievers program.

(2) Infant and early childhood mental health consultation services must be delivered in coordination with the consultants provided under RCW 43.216.090.

(3) The department shall provide, or contract with an entity to provide, reflective supervision and professional development for infant and early childhood mental health consultants to meet national competency standards.

(4) As capacity allows, the department may provide access to infant and early childhood mental health consultation services to caregivers and licensed or certified, military, and tribal early learning providers, license-exempt family, friend, and neighbor care providers, and families with children expelled or at risk of expulsion from child care.

Sec. 310. RCW 43.216.090 and 2019 c 360 s 7 are each amended to read as follows:

INFANT AND EARLY CHILDHOOD MENTAL HEALTH CONSULTATION.

((The)) Beginning July 1, 2021, the department of children, youth, and families must have or contract for one infant and early childhood mental health consultation coordinator and must enter into a contractual agreement with an organization providing coaching services to early achievers program participants to hire ~~((one))~~ at least 12 qualified infant and early childhood mental health consultants ~~((for each of the six department-designated regions))~~. The department shall determine, in collaboration with the statewide child care resource and referral network, where the additional consultants should be sited based on factors such as the total provider numbers overlaid with indicators of highest need. The infant and early childhood mental health consultants must support early achievers

program coaches and child care providers by providing resources, information, and guidance regarding challenging behavior and expulsions and may travel to assist providers in serving families and children with severe behavioral needs. ~~((In coordination with the contractor, the department of children, youth, and families must report on the services provided and the outcomes of the consultant activities to the governor and the appropriate policy and fiscal committees of the legislature by June 30, 2021.))~~

NEW SECTION. Sec. 311. PLAY AND LEARN GROUPS. Subject to the availability of amounts appropriated for this specific purpose, the department, in consultation with community-based programs, shall provide or contract to provide, or both, resources and supports for inclusive and culturally and linguistically relevant play and learn groups. Play and learn groups offer parents and other caregivers culturally responsive opportunities to support their children's early learning, build relationships that reduce isolation and encourage socialization, and promote kindergarten readiness.

NEW SECTION. Sec. 312. PROFESSIONAL DEVELOPMENT. (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall provide professional development supports to aid eligible providers in reaching the professional education and training standards adopted by the department. Professional development supports may include:

(a) Department-required trainings for child care providers conducted by department-approved trainers;

(b) Trainings for license-exempt family, friend, and neighbor child care providers conducted by department-approved trainers;

(c) Early achievers scholarships;

(d) Community-based training pathways and systems developed under RCW 43.216.755;

(e) Supporting a nonprofit organization that provides relationship-based professional development support to family, friend, and neighbor caregivers, child care centers, and licensed family home providers, and their work to help providers start their businesses; and

(f) Other professional development activities such as updating training content, data collection and reporting, trainer recruitment, retention, program monitoring, and trainings delivered by department-approved trainers on topics such as small business management, antibias and antiracist training, providing care for children with developmental disabilities, social-emotional learning, implementing inclusionary practices in early learning environments, infant and toddler care, dual language program development, and providing trauma-informed care.

(2) For the purposes of this section, "eligible provider" means: (a) An owner of a licensed or certified child care center, licensed or certified outdoor nature-based care, or licensed family home provider accepting state subsidy; (b) an employee of a licensed or certified child care center, licensed or certified outdoor nature-based care, or a licensed family home provider; (c) a contractor or provider of the early childhood education and assistance program or birth to three early childhood education and assistance program; or (d) an early achievers coach.

NEW SECTION. Sec. 313. NEGOTIATED RULE MAKING WITH CHILD CARE CENTERS. When the secretary elects to engage in negotiated rule making pursuant to RCW 34.05.310(2)(a), the department must include the largest organization representing child care center owners and directors; the largest organization representing supervisors, teachers, and aides; and other affected interests before adopting requirements that affect child care center licensees.

NEW SECTION. Sec. 314. CAPACITY FLEXIBILITY FOR FAMILY HOME PROVIDERS. The department may waive the limit, as established in RCW 43.216.010(1)(c), that restricts family home providers from serving not more than 12 children. The department must establish conditions for such waivers by rule and must assess, at minimum, the provider's available square footage and staffing capabilities prior to issuing any waiver of the limit of 12 children.

PART IV

STRENGTHENING PRENATAL TO THREE SUPPORTS

NEW SECTION. Sec. 401. PRENATAL TO THREE INTENT. (1) The legislature finds that parental relationships and healthy

interactions in the first few years of life help shape the development of babies' and toddlers' brains and bodies. Eighty percent of the brain is developed by the age of three and parents are a child's first teachers.

(2) The legislature finds that the federal family first prevention services act (P.L. 115-123) offers the state the opportunity to leverage federal funding for certain programs, including in-home parent skill-based programs, substance use disorder support, and mental health interventions. Culturally relevant, evidence-based programs that may qualify for these federal funds are limited. Therefore, state support may be necessary to serve traditionally underrepresented communities and increase positive engagement from parents and caregivers of children from before birth to age three.

(3) The legislature finds that small teacher-child ratios for infant and toddler care, as well as the existence of child care deserts with low levels of access to care for the birth to three age group, contribute to higher expenses for providers and families with babies and young children.

(4) Therefore, the legislature intends to expand parent and family education and support, incentivize the provision of infant and toddler care, and make early therapeutic and preventative services more readily available to families and young children.

NEW SECTION. Sec. 402. EDUCATION AND SUPPORT FOR PARENTS AND FAMILY, FRIEND, AND NEIGHBOR CAREGIVERS. (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer a prenatal to three family engagement strategy to support expectant parents, babies and toddlers from birth to three years of age, and their caregivers.

(2) Components of the prenatal to three family engagement strategy must include supports and services to improve maternal and infant health outcomes, reduce and mitigate trauma, promote attachment and other social-emotional assets, strengthen parenting skills, and provide early supports to help maximize healthy and robust childhood development and reduce isolation. Services and supports may include:

(a) In-home parent skill-based programs and training established in RCW 43.216.130;

(b) Facilitated play and learn groups;

(c) Parent peer-support groups, including groups designed for families with children with complex needs; families whose primary home language is not English; incarcerated parents; families coping with substance use disorder or mental health support needs; black, indigenous, and families of color; or other specific needs; and

(d) Other prenatal to age three programs and services.

(3) Continuity of services for babies and toddlers are important for early childhood brain development. Therefore, the services and supports described in this section may be made available to biological parents, foster parents, kinship care providers, and other family, friend, and neighbor caregivers.

Sec. 403. RCW 43.216.578 and 2019 c 408 s 8 are each amended to read as follows:

BIRTH TO THREE EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM.

(1) ~~((Within resources available under the federal preschool development grant birth to five grant award received in December 2018,))~~ Subject to the availability of amounts appropriated for this specific purpose, the department shall ~~((develop a plan for phased implementation of))~~ administer a birth to three early childhood education and assistance program ~~((pilot project))~~ for eligible children under thirty-six months old. Funds to implement the ~~((pilot project))~~ program may include a combination of federal, state, or private sources.

(2) The department may adopt rules to implement the ~~((pilot project))~~ program and may waive or adapt early childhood education and assistance program requirements when necessary to allow for the operation of the birth to three early childhood education and assistance program. The department shall consider early head start rules and regulations when developing the provider and family eligibility requirements and program requirements. ~~((Any deviations from early head start standards, rules, or regulations must be identified and explained by the department in its annual report under subsection (6) of this section.))~~

~~(3) (a) ((Upon securing adequate funds to begin implementation, the pilot project)) The birth to three early childhood education and assistance program((s)) must be delivered through child care centers and family home providers who meet minimum licensing standards and are enrolled in the early achievers program.~~

~~(b) The department must determine minimum early achievers ratings scores for ((programs)) participating ((in the pilot project)) contractors.~~

~~(4) ((When selecting pilot project locations for service delivery, the department may allow each pilot project location to have up to three classrooms per location. When selecting and approving pilot project locations, the department shall attempt to select a combination of rural, urban, and suburban locations. The department shall prioritize locations with programs currently operating early head start, head start, or the early childhood education and assistance program.~~

~~(5)) To be eligible for the birth to three early childhood education and assistance program, a child's family income must be at or below ((one hundred thirty)) 50 percent of the ((federal poverty level)) state median income and the child must be under thirty-six months old.~~

~~((6) Beginning November 1, 2020, and each November 1st thereafter during pilot project activity, the department shall submit an annual report to the governor and legislature that includes a status update that describes the planning work completed, the status of funds secured, and any implementation activities of the pilot project. Implementation activity reports must include a description of the participating programs and number of children and families served.))~~

NEW SECTION. Sec. 404. INFANT CARE INCENTIVES. (1) The legislature finds that our state suffers from an extreme shortage of infant child care, impacting the ability of parents to participate in the workforce. Further, parents returning to work after using paid family leave to care for a new child struggle to find readily available, high quality care during a time of critical growth and brain development for young children. Therefore, the legislature intends to incentivize the provision of high quality infant care.

(2) Beginning July 1, 2022, the department shall provide an infant rate enhancement for licensed or certified child care providers and birth to three early childhood education and assistance program contractors who are:

(a) Accepting state subsidy;

(b) In good standing with the early achievers quality rating and improvement system; and

(c) Caring for a child between the ages of birth and 11 months.

(3) The department must adopt rules to implement this section.

NEW SECTION. Sec. 405. EARLY THERAPEUTIC AND PREVENTATIVE SERVICES. (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall administer early therapeutic and preventative services and programs, such as the early childhood intervention and prevention services program, and other related services for children who are:

(a) Between the ages of birth and five years; and

(b) Referred by a child welfare worker, a department of social and health services social worker, a primary care physician, a behavioral health provider, or a public health nurse due to: (i) Risk of child abuse or neglect; (ii) exposure to complex trauma; or (iii) significant developmental delays.

(2) Subject to the availability of amounts appropriated for this specific purpose, the department shall make all reasonable efforts to deliver early therapeutic and preventative services and programs statewide. These services and programs must focus first on children and families furthest from opportunity as defined by income and be delivered by programs that emphasize greater racial equity.

PART V

CONFORMING AMENDMENTS

Sec. 501. RCW 43.216.010 and 2020 c 270 s 11 are each reenacted and amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation,

or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" and "child care center" mean(~~s~~) an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" and "family home provider" mean(~~s~~) a child care provider who regularly provides early childhood education and early learning services for not more than twelve children at any given time in the provider's home in the family living quarters except as provided in section 314 of this act;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, and accept only school age children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any entity that provides recreational or educational programming for school age children only and the entity meets all of the following requirements:

(i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;

(ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;

(iii) The entity is a local affiliate of a national nonprofit; and

(iv) The entity is in compliance with all safety and quality standards set by the associated national agency;

(j) A program operated by any unit of local, state, or federal government;

(k) A program located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(l) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(m) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Certificate of parental improvement" means a certificate issued under RCW 74.13.720 to an individual who has a founded finding of physical abuse or negligent treatment or maltreatment, or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6) (b).

(5) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(6) "Department" means the department of children, youth, and families.

(7) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(8) "Early childhood education and assistance program contractor" means an organization that provides early childhood education and assistance program services under a signed contract with the department.

(9) "Early childhood education and assistance program provider" means an organization that provides site level, direct, and high quality early childhood education and assistance program services under the direction of an early childhood education and assistance program contractor.

~~(10) ("Early start" means an integrated high quality continuum of early learning programs for children birth to five years of age. Components of early start include, but are not limited to, the following:~~

~~(a) Home visiting and parent education and support programs;~~

~~(b) The early achievers program described in RCW 43.216.085;~~

~~(c) Integrated full-day and part-day high quality early learning programs; and~~

~~(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.~~

~~(11))~~ "Education data center" means the education data center established in RCW 43.41.400, commonly referred to as the education research and data center.

~~((12))~~ (11) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

~~((13))~~ (12) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties pursuant to RCW 43.216.325(3).

~~((14))~~ (13) "Extended day program" means an early childhood education and assistance program that offers early learning education for at least ten hours per day, a minimum of two thousand hours per year, at least four days per week, and operates year-round.

(14) "Family resource and referral linkage system" means a system that connects families to resources, services, and programs for which families are eligible and uses a database that is developed and maintained in partnership with communities, health care providers, and early learning providers.

(15) "Full day program" means an early childhood education and assistance program that offers early learning

education for a minimum of one thousand hours per year.

(16) "Low-income child care provider" means a person who administers a child care program that consists of at least eighty percent of children receiving working connections child care subsidy.

(17) "Low-income neighborhood" means a district or community where more than twenty percent of households are below the federal poverty level.

(18) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(19) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

(20) "Nonschool age child" means a child who is age six years or younger and who is not enrolled in a public or private school.

(21) "Part day program" means an early childhood education and assistance program that offers early learning education for at least two and one-half hours per class session, at least three hundred twenty hours per year, for a minimum of thirty weeks per year.

(22) "Private school" means a private school approved by the state under chapter 28A.195 RCW.

(23) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(24) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(25) "School age child" means a child who is five years of age through ~~((twelve))~~ 13 years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

(26) "Secretary" means the secretary of the department.

(27) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program.

Sec. 502. RCW 28B.50.248 and 2020 c 355 s 4 and 2020 c 279 s 3 are each reenacted and amended to read as follows:

Nothing in RCW 43.216.135(~~(7)~~) or 43.216.136(~~(7, or 43.216.1365)~~) requires a community or technical college to expand any of its existing child care facilities. Any additional child care services provided by a community or technical college as a result of RCW 43.216.135(~~(7)~~) or 43.216.136(~~(7, or 43.216.1365)~~) must be provided within existing resources and existing facilities.

Sec. 503. RCW 43.84.092 and 2020 c 354 s 11, 2020 c 221 s 5, 2020 c 103 s 7, and 2020 c 18 s 3 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 abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond

water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community (~~trust~~) services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes 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 marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension

funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving 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, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the statewide broadband account, the statewide tourism marketing account, 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 toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension

principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 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 administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond 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.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

Sec. 504. RCW 43.84.092 and 2020 c 354 s 11, 2020 c 221 s 5, 2020 c 148 s 3, 2020 c 103 s 7, and 2020 c 18 s 3 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 abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account,

the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community ~~(trust)~~ services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the fish, wildlife, and conservation account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the limited fish and wildlife account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the

marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving 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, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, 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 toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation

improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 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 administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond 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.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

Sec. 505. RCW 43.84.092 and 2020 c 221 s 5, 2020 c 148 s 3, 2020 c 103 s 7, and 2020 c 18 s 3 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 abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community ((~~trust~~)) services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the fish, wildlife, and conservation account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the

Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the limited fish and wildlife account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving 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, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, 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 toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 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 administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond 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.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall

receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

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

Sec. 506. RCW 43.216.710 and 2017 3rd sp.s. c 6 s 213 are each amended to read as follows:

The department shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with household incomes at or below ~~((household incomes of two hundred))~~ 100 percent of the ~~((federal poverty line))~~ state median income;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department licensors to provide information to local child care resource and referral organizations about licensed or certified child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers;

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services;

(9) Subject to the availability of amounts appropriated for this specific purpose, increase the base rate for all child care providers by ten percent;

(10) Subject to the availability of amounts appropriated for this specific purpose, provide tiered subsidy rate enhancements to child care providers if the provider meets the following requirements:

(a) The provider enrolls in quality rating and improvement system levels 2, 3, 4, or 5;

(b) The provider is actively participating in the early achievers program;

(c) The provider continues to advance towards level 5 of the early achievers program; and

(d) The provider must complete level 2 within thirty months or the reimbursement rate returns the level 1 rate; and

(11) Require exempt providers to participate in continuing education, if adequate funding is available.

Sec. 507. RCW 43.216.514 and 2020 c 343 s 3 are each amended to read as follows:

(1) (a) The department shall prioritize children for enrollment in the early childhood education and assistance program who are eligible pursuant to RCW 43.216.505.

(b) A child who is eligible at the time of enrollment in the early childhood education and assistance program maintains program eligibility until the child begins kindergarten.

(2) As space is available, children may be included in the early childhood education and assistance program pursuant to RCW 43.216.512. ~~((Priority within this group must be given first to children with incomes up to one hundred thirty percent of the federal poverty level.))~~

PART VI

MISCELLANEOUS

NEW SECTION. Sec. 601. Nothing in this act changes the department's responsibility to collectively bargain over mandatory subjects consistent with RCW 41.56.028(3) or limits the legislature's authority to make programmatic modifications to licensed child care and early learning programs consistent with legislative reservation of rights under RCW 41.56.028(4) (d).

NEW SECTION. Sec. 602. RCW 43.216.1365 (Working connections child care program—Eligibility) and 2020 c 355 s 3 are each repealed.

NEW SECTION. Sec. 603. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements

that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 604. Sections 204 through 206 and 403 of this act take effect July 1, 2026.

NEW SECTION. Sec. 605. Sections 101, 102, 106, 201, 206, 207, 302 through 307, 309, 311 through 314, 402, 404, 405, and 601 of this act are each added to chapter 43.216 RCW.

NEW SECTION. Sec. 606. Section 503 of this act expires July 1, 2021.

NEW SECTION. Sec. 607. Sections 201, 202, 301, 310, and 504 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2021.

NEW SECTION. Sec. 608. Section 504 of this act expires July 1, 2024.

NEW SECTION. Sec. 609. Section 505 of this act takes effect July 1, 2024.

NEW SECTION. Sec. 610. Sections 105 and 503 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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Chandler; Dye; Hoff; Jacobsen and Schmick.

MINORITY recommendation: Without recommendation. Signed by Representatives Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Harris; Rude and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

SSB 5249

Prime Sponsor, Committee on Early Learning & K-12 Education: Supporting mastery-based learning. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representative Stokesbary, Ranking Minority Member.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5253 Prime Sponsor, Committee on Ways & Means: Implementing the recommendations of the pollinator health task force. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Rural Development, Agriculture & Natural Resources.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The purpose of this act is to implement the recommendations of the pollinator health task force created by section 3, chapter 353, Laws of 2019, entitled "Recommendations of the Pollinator Health Task Force - for Pollinator Health in Washington" (November 2020).

(2) The task force provided recommendations to help prioritize and enact policy changes for pollinators in Washington. The recommendations are organized under five broad categories: (a) Habitat; (b) pesticides; (c) education; (d) managed pollinators; and (e) research.

(3) The task force met for the first time the same week that the Asian giant hornet was first discovered in Washington and the week after the Houdini fly was also reported for the first time in Washington. Asian giant hornets primarily hunt honey bees and destroy entire honey bee hives. The Houdini fly threatens native mason bee populations as well as managed mason bees. Washington is home to over 400 different species of native bees, 65 species of butterflies, as well as moths, wasps, beetles, flies,

and hummingbirds. The loss of pollinators, managed and unmanaged, can lead to decreased yields of many fruits, nuts, and vegetables. Washington is currently the top producer in the United States of apples, sweet cherries, alfalfa, blueberries, and pears. In Washington state, honey bees and other pollinators are responsible for the production of tree fruits, small fruits, and other crops.

(4) The legislature intends by this act to implement various recommendations from the pollinator health task force to protect and expand the habitat upon which pollinators depend, by providing technical and financial assistance to public and private landowners, and by coordinating with state agencies and local governments in promoting practices to ensure sustainable, healthy populations of managed and native pollinators.

NEW SECTION. Sec. 2. A new section is added to chapter 43.23 RCW to read as follows:

(1) The department shall create and chair a pollinator health task force. The department shall appoint the members of the task force, which must include, but is not limited to, representatives of the following interests, organizations, and state agencies:

- (a) The conservation commission;
- (b) The department of natural resources;
- (c) The department of fish and wildlife;
- (d) The state parks and recreation commission;
- (e) The Washington state department of transportation;
- (f) The state noxious weed control board;
- (g) The tree fruit industry;
- (h) The seed industry;
- (i) The berry industry;
- (j) Other agricultural industries dependent upon pollinators;
- (k) Washington State University;
- (l) Pesticide distributors and applicators;
- (m) Conservation organizations;

(n) Organizations representing beekeepers or apiarists;

(o) A member of the public from west of the crest of the Cascade mountains; and

(p) A member of the public from east of the crest of the Cascade mountains.

(2) One or more representatives of Washington tribes must also be invited to participate on the task force.

(3) One youth representative from an organization that encourages students to engage in agricultural education must also be invited to participate on the task force when available.

(4) The task force shall build upon existing pollinator research and pollinator habitat plans at the national and state level including, but not limited to, the state-managed pollinator plan, to assist with the development of an implementation plan to implement the state pollinator health strategy.

(5) The task force shall assist, as practicable, with implementation of the recommendations of the task force submitted to the legislature in November 2020.

(6) The department shall provide the implementation plan to the appropriate committees of the senate and house of representatives by December 31, 2021, in compliance with RCW 43.01.036. The implementation plan must include the task force's evaluation and development of protocols that would increase communications between beekeepers, farmers and growers, and pesticide applicators including, but not limited to, education and outreach to beekeepers, farmers and growers, and pesticide applicators.

(7) The department shall provide information related to implementation of the state pollinator health strategy and a recommendation of whether to extend the task force beyond January 1, 2024, to the appropriate committees of the senate and house of representatives by December 1, 2022, in compliance with RCW 43.01.036.

(8) This section expires January 1, 2024.

Sec. 3. RCW 43.23.300 and 2019 c 353 s 2 are each amended to read as follows:

(1) The department shall establish a program to promote and protect pollinator habitat and the health and sustainability

of pollinator species. As funds are made available, the program must provide technical and financial assistance to state agencies, local governments, and private landowners to implement practices that promote habitat for ~~((managed))~~ all pollinators, including native species, as well as beekeeper and grower best management practices. The program must be administered in coordination with the apiary program established in chapter 15.60 RCW, the honey bee commission authorized in chapter 15.62 RCW, and programs administered by the conservation commission and conservation districts.

(2) Subject to the availability of funds appropriated for this specific purpose, and in consultation with the department of fish and wildlife, the department must:

(a) Review, in consultation with Washington State University, education needs related to pollinator education and develop a plan that outlines the goals related to pollinator education and the necessary partners, personnel, and other resources;

(b) Evaluate and complete an analysis of critical impacts and needed best management practices for managed and wild pollinators. The department shall lead this effort in partnership with Washington State University, and in collaboration with the department of fish and wildlife and the state conservation commission. The effort must utilize the framework established in the state's managed pollinator protection plan as a guide for formal recommendations and education opportunities. The analysis must address food insecurities, habitat loss, virus and disease, pests, and pesticides, which may play a role in pollinator health decline. The department shall make the resources produced pursuant to this subsection available to the public on the department's website, as well as through Washington State University and the state's conservation districts;

(c) Document, in consultation with Washington State University, the bee species within the state and map their distributions as practicable;

(d) Provide economic and environmental impacts of weed listing and categorization on pollinator health to county noxious weed control boards in consultation with the state noxious weed

control board and annually submit a report to the noxious weed control board describing pollinator health issues;

(e) Provide materials, where practicable and in consultation with Washington State University, about certification programs that support pollinator health, biodiversity, and low-impact pesticide application to the public;

(f) Educate the public through plant nurseries about the necessity for blooming nectar plants to be available to wild and managed pollinators throughout their respective active seasons;

(g) Survey registered beekeepers to determine whether the current apiary program should be expanded to include apiary inspections or registration of apiary yards;

(h) Continue and maintain partnership with federal agencies and neighboring states to promote and enhance the implementation of the national strategy to promote the health of honey bees and improve pollinator health;

(i) Increase the availability of pollinator-related resources on the department's website, as practicable, and other state agencies' websites as appropriate;

(j) Review guidelines on state-managed lands to protect native pollinators and improve transparency for state-managed land areas which may permit managed honey bees so that impacts to wild pollinators from honey bees may be minimized; and

(k) In consultation with the department of revenue, review the open space taxation act and provide recommendations to the legislature, in compliance with RCW 43.01.036, on options to include pollinator habitat in the current open space property tax classification.

NEW SECTION. Sec. 4. A new section is added to chapter 17.21 RCW to read as follows:

(1) The department shall continue to evaluate and update, as necessary, pesticide regulatory and education programs focused on measures to protect pollinator health. This work by the department, when appropriate, must be coordinated with Washington State University pesticide education programs to limit duplication and ensure consistent information sharing.

(2) Subject to the availability of amounts appropriated for this specific purpose, and in consultation with the department of fish and wildlife with regard to considerations for native pollinator species, the department must:

(a) Evaluate and adapt pesticide training and drift reduction technical assistance programs to include up-to-date protection measures for pollinators;

(b) Support Washington State University's pesticide education programs continued incorporation of pollinator protection measures during their training and certification classes, and coordinate on presented research, new protection measures, technological advancements, and any other significant science-based information;

(c) Coordinate with pollinator health staff in the department and at Washington State University to conduct investigations and share annual findings from pesticide-related investigations with the pollinator health task force;

(d) Evaluate and, if necessary, update the pesticide civil penalty matrix related to pollinator death or damage due to the misuse of pesticides and ensure pollinator health protections are included;

(e) When possible, the department must provide credits for pesticide courses focused on pollinator protection measures.

(3) By December 31, 2021, the department shall provide a report to the appropriate committees of the senate and house of representatives, in compliance with RCW 43.01.036, that includes recommendations for measures to mitigate the risks of harm to bees and other pollinators from the use of neonicotinoid pesticides and treated seeds. The department shall evaluate and incorporate the reviews scheduled for completion by the United States environmental protection agency during 2021, including recommended mitigation measures from that agency. The department shall also review neonicotinoid pesticide use restrictions and labeling requirements adopted in other states and include in the report any recommendations for adoption of similar requirements in this state.

Sec. 5. RCW 17.24.081 and 1991 c 257 s 12 are each amended to read as follows:

It shall be unlawful for a person to:

(1) Sell, offer for sale, or distribute a noxious weed or a plant or plant product or regulated article infested or infected with a plant pest declared by rule to be a threat to the state's forest, agricultural, horticultural, floricultural, or beekeeping industries or environment;

(2) Knowingly receive a noxious weed, or a plant, plant product, bees, bee hive or appliances, or regulated article sold, given away, carried, shipped, or delivered for carriage or shipment within this state, in violation of the provisions of this chapter or the rules adopted under this chapter;

(3) Fail to immediately notify the department and isolate and hold the noxious weed, bees, bee hives or appliances, plants or plant products, or other thing unopened or unused subject to inspection or other disposition as may be provided by the department, where the item has been received without knowledge of the violation and the receiver has become subsequently aware of the potential problem;

(4) Knowingly conceal or willfully withhold available information regarding an infected or infested plant, plant product, regulated article, or noxious weed;

(5) Introduce or move into this state, or to move or dispose of in this state, a plant, plant product, or other item included in a quarantine, except under rules as may be prescribed by the department, after a quarantine order has been adopted under this chapter against a place, nursery, orchard, vineyard, apiary, other agricultural establishment, county of this state, another state, territory, or a foreign country as to a plant pest, bee pest, or noxious weed or genetically engineered plant or plant pest organism, until such quarantine is removed;

(6) Introduce or move nonnative managed bumble bees into this state to be used in open-field agricultural use.

NEW SECTION. Sec. 6. A new section is added to chapter 28B.30 RCW to read as follows:

The Washington State University extension program must develop a

pollinator extension education and outreach program and develop a statewide, science-based, pollinator education plan to educate beekeepers, agricultural producers, land managers, licensed pesticide applicators, other professionals, and the public. The plan should emphasize pollinator best management practices for both native and managed species.

NEW SECTION. Sec. 7. A new section is added to chapter 39.04 RCW to read as follows:

If a public works project includes landscaping, at least 25 percent of the planted area must be pollinator habitat to the extent practicable. For purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees. The department of agriculture, in consultation with the conservation commission and the department of fish and wildlife, must develop a list of native forage plants that are pollen-rich or nectar-rich and beneficial for all pollinators, including honey bees.

Sec. 8. RCW 77.12.058 and 2019 c 353 s 8 are each amended to read as follows:

(1) The department must implement practices necessary to maintain pollinator habitat on department-owned and managed agricultural and grazing lands where practicable. ((For the purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees, as determined by the department.))

(2) The department must evaluate various restoration techniques with the goal of improving habitat for native pollinators. The department must update its riparian habitat recommendations to encourage development of pollinator habitat where practicable when making habitat improvements or for riparian restoration.

(3) For the purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees, as determined by the department.

Sec. 9. RCW 89.08.620 and 2020 c 351 s 4 are each amended to read as follows:

(1) When prioritizing grant recipients, the commission, in consultation with the department of agriculture, Washington State University, the department of fish and wildlife, and the United States department of agriculture natural resources conservation service, shall seek to maximize the benefits of the grant program by leveraging other state, nonstate, public, and private sources of money. The primary metrics used to rank grant applications must be made public by the commission.

(2) The grant program must prioritize or weight projects based on consideration of the individual project's ability to:

(a) Increase the quantity of organic carbon in topsoil through practices including, but not limited to, cover cropping, no-till and minimum tillage conservation practices, crop rotations, manure application, biochar application, compost application, and changes in grazing management;

(b) Increase the quantity of organic carbon in aquatic soils;

(c) Intentionally integrate trees, shrubs, seaweed, or other vegetation into management of agricultural and aquacultural lands, with preference for native vegetation where practicable and appropriate;

(d) Reduce or avoid carbon dioxide equivalent emissions in or from soils;

(e) Reduce nitrous oxide and methane emissions through changes to livestock or soil management; and

(f) Increase usage of precision agricultural practices.

(3) The commission shall develop and approve a prioritization metric to guide the distribution of funds appropriated by the legislature for this purpose, with the goal of producing cost-effective carbon dioxide equivalent impact benefits.

(4) Applicants that create riparian buffers along waterways, or otherwise benefit fish habitat, must receive an enhanced prioritization compared to other grant applications that perform similarly under the prioritization metrics developed by the commission.

(5)(a) Applicants that create or maintain pollinator habitat must receive an enhanced prioritization compared to other grant applications that perform similarly under the prioritization metrics developed by the commission.

(b) For the purposes of this subsection, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees, as determined by the department of agriculture.

(6) The commission shall downgrade a specific grant proposal within its prioritization metric if the proposal is expected to cause significant environmental damage to fish and wildlife habitat.

NEW SECTION. **Sec. 10.** A new section is added to chapter 89.08 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission is authorized to develop an ongoing small grants program to provide funding to the conservation districts to educate residents and community groups in urban, suburban, and rural nonfarm areas about the value of habitat for both managed and native pollinators, and to provide the necessary technical and financial assistance and materials to create it.

(2) Educational efforts should include the benefits of habitat diversity, especially pollen-rich and nectar-rich flowering forbs and shrubs. Preference for pollinator plants should be given to native plants or noninvasive, nonnative plants.

(3) Planting projects should provide diverse native or nonnative, noninvasive plants of high quality for pollinator foraging, nesting, and overwintering, as determined by site suitability. Options may include, but are not limited to, bee or eco-lawns, flowering meadow gardens, xeriscaping, shrub plantings, tree plantings, rain gardens, riparian restoration, and other pollinator-friendly landscaping.

(4) Criteria to rank applicants should include a detailed budget demonstrating funding needs, resource concerns addressed, value to at-risk native pollinators, multiple-use benefits of

habitat, planned project longevity, and plans for long-term maintenance."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

SSB 5254 Prime Sponsor, Committee on Labor, Commerce & Tribal Affairs: Concerning the use of protective devices and equipment during a public health emergency. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

SSB 5258 Prime Sponsor, Committee on Ways & Means: Concerning consumer directed employers. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Caldier and Dye.

MINORITY recommendation: Without recommendation. Signed by Representatives MacEwen,

Assistant Ranking Minority Member; Boehnke; Chandler and Schmick.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5259 Prime Sponsor, Committee on Ways & Means: Concerning law enforcement data collection. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that law enforcement transparency and accountability are vital in maintaining public trust. Data collection is one essential tool to allow the public, law enforcement, and policymakers to analyze the effectiveness of existing police practices, determine which policies and training work and do not work, and avoid unintended consequences by supporting policy decisions with clear and relevant data.

The legislature finds that creating a statewide data collection program that creates a publicly accessible database to track metrics will help to promote openness, transparency, and accountability, build stronger police-community relations, improve trust and confidence in policing services, evaluate specific areas of concern such as biased policing and excessive force, and ultimately improve the quality of policing services.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Contractor" means the institution of higher education contracted with the office of the attorney general to implement the statewide use of force data program as provided in this chapter.

(2) "Great bodily harm" has the same meaning as in RCW 9A.04.110.

(3) "Institution of higher education" has the same meaning as in RCW 28B.92.030.

(4) "Law enforcement agency" or "agency" means any general authority

Washington law enforcement agency and limited authority Washington law enforcement agency as those terms are defined in RCW 10.93.020.

(5) "Substantial bodily harm" has the same meaning as in RCW 9A.04.110.

NEW SECTION. Sec. 3. (1)(a) Subject to the availability of amounts appropriated for this specific purpose, the attorney general's office shall establish an advisory group to assist with the office's design, development, and implementation of a statewide use of force data program. Members are appointed by the attorney general's office and must consist of:

(i) At least three representatives from local nongovernmental organizations or advocacy groups that have a focus on or expertise in the use and role of data as it relates to interactions between law enforcement and the community;

(ii) At least three representatives from law enforcement agencies or organizations representing the interests of law enforcement in interacting and utilizing this data; and

(iii) At least one representative from the private sector or the public sector with experience in data collection programs, preferably law enforcement data collection.

(b) To ensure the advisory group has diverse and inclusive representation of those affected by its work, advisory group members whose participation in the advisory group may be hampered by financial hardship may apply for a stipend in an amount not to exceed \$100 for each day during which the member attends an official meeting of the advisory group or performs prescribed duties approved by the attorney general's office.

(2) By April 1, 2022, the advisory group shall submit to the attorney general its recommendations on the following elements:

(a) How to prioritize the implementation of the reporting, collection, and publication of the use of force data reports required in section 4(2) of this act;

(b) Additional incidents and data to be collected from law enforcement agencies on interactions between officers and the public, such as traffic stops, pedestrian stops, calls for

services, arrests, vehicle pursuits, and disciplinary actions, as well as demographic information including race, ethnicity, and gender of a crime victim or victims. This recommendation should consider phased implementation, if necessary, based on current practices and available data as compared to additional practices and new data that would need to be implemented by law enforcement agencies;

(c) Recommend practices for law enforcement agencies to collect and report data to the contractor. To the greatest extent feasible, the reporting mechanisms for the program must include the opportunity for law enforcement agencies to submit the required data elements through incident reports or any other electronic means. The advisory group may also work to develop a standardized incident report that meets the data and reporting requirements of the statewide use of force data program for voluntary use by law enforcement agencies;

(d) Recommend practices for the public to report relevant information to the contractor directly, or its successor, including correcting misreported and otherwise incorrect data;

(e) Recommend practices for public, law enforcement, and academic access and use of program data that must include, at a minimum:

(i) Public access to deidentified raw and/or refined incident based data using an established open data standard, available online at no cost in a downloadable, machine-readable, nonproprietary format, redacted only as necessary to comply with the public records act (chapter 42.56 RCW) and the Washington state criminal records privacy act (chapter 10.97 RCW);

(ii) Publicly accessible online data dashboards that summarize and analyze the data, excluding personally identifiable information;

(iii) Interactive data visualization tools designed for law enforcement agencies and other entities to use the data for research, professional development, training, and management;

(iv) The ability to extract data from incident reports, or other electronic means, and officer narratives in order to standardize data across multiple agencies;

(v) Ensure protection and removal of all personally identifiable information of officers, subjects, and victims in any data or analyses that are publicly released; and

(vi) Semiannual reports, summarizing the data collected and any related analysis, published on the website and submitted to the legislature and governor by June 1st and December 1st of each year;

(f) Recommend practices for quality improvement, including periodically obtaining input from stakeholders about how the program can better meet the needs of the public and law enforcement;

(g) Recommend practices in the following areas:

(i) Analytical dashboards with individual officer details for use by law enforcement agencies as a risk management tool;

(ii) Agency level comparative dashboards for all law enforcement agencies in the state;

(iii) Incorporating available historical data to identify long-term trends and patterns; and

(iv) Analysis of data, using methodologies based in best practices or tested and validated in other jurisdictions, if possible, including, but not limited to, analysis of the data using legal algorithms based on available and applicable legal standards.

(3)(a) The office of the attorney general shall review the recommendations of the advisory group and approve or reject, in whole or in part, the recommendations. In reviewing the program recommendations, the office of the attorney general shall consider:

(i) Available funding to achieve the recommendations;

(ii) Prioritizing the implementation of the reporting, collection, and publication of the use of force data reports in section 4(2) of this act;

(iii) The interests of the public in accessing information in a transparent and expedient manner. In considering the interests of the public, the advisory board shall accept and consider comments from impacted family members or their designees;

(iv) The institutional operations and demands of law enforcement agencies through input and comments from the criminal justice training center and local law enforcement agencies.

(b) For any recommendation that was rejected, in part or in full, the advisory group may submit revised recommendations for consideration by the office of the attorney general in accordance with any deadlines established by the office. The office of the attorney general may also approve recommendations subject to the legislature appropriating the funding necessary for their implementation.

(c) The office of the attorney general may not approve any recommendation that requires any law enforcement agency to disclose information that would jeopardize an active criminal investigation, confidential informant, or intelligence information.

(4) The approved recommendations and the requirements contained in section 4 of this act constitute the statewide use of force data program.

(5) This section expires January 1, 2023.

NEW SECTION. **Sec. 4.** (1) Each law enforcement agency in the state is required to report each incident where a law enforcement officer employed by the agency used force and:

(a) A fatality occurred in connection with the use of force;

(b) Great bodily harm occurred in connection with the use of force;

(c) Substantial bodily harm occurred in connection with the use of force; or

(d) A law enforcement officer:

(i) Discharged a firearm at or in the direction of a person;

(ii) Pointed a firearm at a person;

(iii) Used a chokehold or vascular neck restraint;

(iv) Used an electronic control weapon including, but not limited to, a taser, against a person;

(v) Used oleoresin capsicum spray against a person;

(vi) Discharged a less lethal shotgun or other impact munitions at or in the direction of a person;

(vii) Struck a person using an impact weapon or instrument including, but not limited to, a club, baton, or flashlight;

(viii) Used any part of their body to physically strike a person including, but not limited to, punching, kicking, slapping, or using closed fists or feet;

(ix) Used a vehicle to intentionally strike a person or vehicle; or

(x) Deployed a canine by releasing it from the physical control of the law enforcement officer or had under the law enforcement officer's control a canine that bites a person.

(2) Each report required in subsection (1) of this section must include the following information:

(a) The date and time of the incident;

(b) The location of the incident;

(c) The agency or agencies employing the law enforcement officers;

(d) The type of force used by the law enforcement officer;

(e) The type of injury to the person against whom force was used, if any;

(f) The type of injury to the law enforcement officer, if any;

(g) Whether the person against whom force was used was armed or unarmed;

(h) Whether the person against whom force was used was believed to be armed;

(i) The type of weapon the person against whom force was used was armed with, if any;

(j) The age, gender, race, and ethnicity of the person against whom force was used, if known;

(k) The tribal affiliation of the person against whom force was used, if applicable and known;

(l) Whether the person against whom force was used exhibited any signs associated with a potential mental health condition or use of a controlled substance or alcohol based on the observation of the law enforcement officer;

(m) The name, age, gender, race, and ethnicity of the law enforcement officer;

(n) The law enforcement officer's years of service;

(o) The reason for the initial contact between the person against whom force was used and the law enforcement officer;

(p) Whether any minors were present at the scene of the incident, if known;

(q) The entity conducting the independent investigation of the incident, if applicable;

(r) Whether dashboard or body worn camera footage was recorded for an incident;

(s) The number of officers who were present when force was used; and

(t) The number of suspects who were present when force was used.

(3) Each law enforcement agency must also report any additional incidents and data required by the statewide use of force data program developed in section 3 of this act.

(4) All law enforcement agencies shall submit the reports required by this section in accordance with the requirements of the statewide use of force data program no later than three months after the office of the attorney general determines that the system procured in section 5 of this act can accept law enforcement agency reports. Reports must be made in the format and time frame established in the statewide use of force data program.

(5) A law enforcement agency has satisfied its reporting obligations pursuant to this act by submitting the reports and data required under this section. The contractor shall provide technical assistance to any law enforcement agency in gathering, compiling, and submitting the required reports and data for each incident.

NEW SECTION. Sec. 5. (1) Subject to the availability of amounts appropriated for this specific purpose, the office of the attorney general must engage in a competitive procurement to contract with an institution of higher education to implement the statewide use of force data program. The primary purpose of the contract is to develop a system for law enforcement agencies to report, collect, and publish the use of force data reports required in section 4 of this act.

(2) The request for proposal or other procurement method should encourage collaboration with other public and private institutions, businesses, and

organizations with significant expertise and experience in collecting, tracking, and reporting data on law enforcement interactions with the public.

(3) Members and representatives of entities participating in the advisory group established in section 3 of this act may not participate or bid in the competitive procurement.

(4) The advisory group, or designated members of the group, may participate in the procurement process through the development of the request for proposal and the review and evaluation of responsive bidders.

(5) The contract must require the successful bidder to provide appropriate training to its staff and subcontractor staff, including training on racial equity issues.

NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 10 RCW."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke; Caldier; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member and Chandler.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5265 Prime Sponsor, Committee on Ways & Means: Creating a bridge year pilot program. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Education.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the ongoing COVID-19 pandemic has created an unprecedented disruption to the education of students throughout the

state, and uniquely impacted students who are or were nearing the completion of graduation requirements.

(2) Although remote and hybrid instruction, supported by the exceptional efforts of teachers and other education professionals, has proven satisfactory for many students, some courses, subjects, and critical attributes of in-person learning experiences cannot be replicated through highly modified learning environments. Additionally, some education experiences, including full course offerings and extracurricular activities, were reduced or eliminated in response to the pandemic.

(3) The legislature, therefore, in recognition of the extraordinary impacts of an ongoing pandemic, intends to establish a temporary two-year program to provide an opportunity for students in the graduating classes of 2021 and 2022 to complete up to one additional school year to pursue academic and experiential opportunities that were diminished or eliminated as a result of the COVID-19 pandemic.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.630 RCW to read as follows:

(1)(a) The bridge year program is established to provide an opportunity for students in the graduating classes of 2021 and 2022 to complete up to one additional school year to pursue academic and experiential opportunities that were diminished or eliminated as a result of the COVID-19 pandemic. The program is temporary, expires as provided in section 8 of this act, and shall be administered by the state board of education.

(b) The objective of a bridge year is for students, with the support of the applicable high school, to remedy or otherwise address:

(i) Learning loss, including learning loss that may be attributable to fewer opportunities for in-person instruction during the 2020-21 school year, learning loss evidenced by academic performances that were inconsistent with previous efforts of the student, and the loss of opportunity to learn in the manner traditionally accessed by the student;

(ii) Unmet graduation requirements, including opportunities for meeting graduation requirements that were not available during the 2020-21 school year;

(iii) Fewer opportunities to access and earn 24 credits;

(iv) Fewer opportunities to access courses traditionally offered to students, including career and technical education courses and dual credit courses;

(v) Fewer or significantly modified opportunities for mastering academic skills, including diminished opportunities for accessing: Applied learning experiences and learning experiences traditionally associated with the synchronous efforts of other students, such as music and drama, and services provided to students in accordance with individualized education programs; and

(vi) Fewer or significantly modified opportunities for social-emotional learning, and extracurricular and cocurricular activities.

(2)(a) Each public school and school district that applied to the state board of education for authorization to grant individual student emergency waivers under section 2, chapter 7, Laws of 2021 must offer the bridge year program to students of the applicable public school or school district in the graduating classes of 2021 and 2022.

(b) Private schools subject to requirements under chapter 28A.195 RCW may participate in the applicable provisions of the program, as determined by rule of the state board of education.

(3)(a) Each public high school participating in the program shall designate a school staff member as a program liaison to assist students and families with the implementation of the program. Nothing in this section requires a school or school district to hire an individual to serve as a program liaison.

(b) The program liaison shall provide individual student advising to help students determine whether the program is appropriate for their needs and, if so, assist each student in developing an addendum to their high school and beyond plan. The addendum must define the academic goals and objectives to be achieved during the student's bridge year, examples of which include increased mastery of academic concepts, completion of dual credit courses, career and technical education courses, or both, and additional experiences in applied learning environments. The addendum also

must detail activities and strategies for accomplishing the goals and objectives, including counseling, academic support, coursework, and extracurricular and cocurricular activities.

(4) Each high school participating in the program shall maintain records as necessary and as required by rule of the state board of education to demonstrate compliance with this section.

(5) Students in the graduating classes of 2021 and 2022 may participate in the program for up to one academic year. Student participation in the program is voluntary and may not be mandated by a school or school district. If a student has met all applicable graduation requirements and elects to participate in the program, the student must defer graduation for the duration of the bridge year. Students who participate in the program must:

(a) Have had their ability to complete one or more graduation requirements impeded by the COVID-19 pandemic; and

(b) Have been reasonably expected to graduate in the academic year prior to their participation in the program.

(6) Schools and school districts participating in the program shall expunge marks or grades from a participating student's transcript if the student completes the course with a higher mark or grade during their bridge year.

(7)(a) Students participating in the program who defer graduation for one year in accordance with subsection (5) of this section may participate in graduation ceremonies with the graduating class of 2021 or 2022, as applicable, but the high school may not issue diplomas to those students until the conclusion of the bridge year or upon a student's withdrawal from the program.

(b) Participating students who have met all graduation requirements have graduated with their initial graduation cohort for purposes of calculating the four-year graduation rate for that cohort.

(8) A student who withdraws from the program or meets the goals and objectives of the high school and beyond plan addendum before completing the academic year is, upon withdrawal or completion of the goals and objectives, ineligible to participate in interscholastic and

extracurricular activities of an athletic, cultural, social, or recreational nature authorized under section 3 of this act.

(9) For purposes of funding allocations and student enrollment, students participating in the program who enroll in running start courses count as running start students for time spent in running start courses.

(10) School districts, charter schools, and state-tribal education compact schools participating in the program are eligible for funds provided in accordance with chapters 28A.150, 28A.710, and 28A.715 RCW, as applicable.

(11) The state board of education shall adopt, and may amend as necessary, rules to implement this section.

(12) For the purposes of this section and section 3 of this act:

(a) "Bridge year" means the full or partial academic year during which a student is participating in the program; and

(b) "Program" means the bridge year program established by this section.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.630 RCW to read as follows:

(1) A student participating in a program pursuant to section 2 of this act shall be, for purposes of eligibility for activities sanctioned by the Washington interscholastic activities association and extracurricular activities, considered in their fourth year of eligibility after entering the ninth grade.

(2) A student participating in a sport or extracurricular activity during the student's bridge year shall pay applicable student athletic and activities fees and be subject to the applicable high school's student code of conduct, athletic code of conduct, and any other applicable codes, rules, or policies required for student participation in these activities.

(3) Notwithstanding the provisions of any law, rule, or regulation to the contrary, an insurer doing business in the state and issuing liability insurance policies to school districts must provide coverage for students participating in a sport or extracurricular activity under this section as part of a school or

school district's liability insurance policy.

(4) For purposes of this section, "bridge year" and "program" have the same meaning as in section 2 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.630 RCW to read as follows:

(1) The state board of education, in accordance with RCW 43.01.036, shall report its finding and recommendations regarding the bridge year program established in section 2 of this act to the governor, the superintendent of public instruction, and the education committees of the legislature by April 1, 2023.

(2) The report required by this section must include:

(a) The number of students, schools, and school districts that participated in the program, by school year;

(b) Reasons identified by students for participating in the program, by school year;

(c) The number and percentage of students who completed the requirements of the program, by school year;

(d) The average number of high school and postsecondary credits earned by students participating in the program, by school year;

(e) The number and percentage of students who did not complete the requirements of the program and the reasons identified by students for not doing so, by school year; and

(f) Any other information deemed relevant by the state board of education.

(3) Student-level data required by this section for participating students must be disaggregated in a manner that is consistent with RCW 28A.300.042(3).

(4) The office of the superintendent of public instruction shall collect the data necessary for the report required by this section and provide the data to the state board of education by December 31, 2022.

Sec. 5. RCW 28A.600.290 and 2015 c 202 s 3 are each amended to read as follows:

(1)(a) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16

school year, funding may be allocated at an amount per college credit for eleventh and twelfth grade students ~~((or))~~, students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grade, and students participating in a bridge year under section 2 of this act, who are enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of allocated credits per participating student shall be specified in the omnibus appropriations act, which must not exceed ten credits. Funding shall be prioritized in the following order:

(i) High schools offering a running start in the high school program in school year 2014-15. These schools shall only receive prioritized funding in school year 2015-16;

(ii) Students whose residence or the high school in which they are enrolled is located twenty driving miles or more as measured by the most direct route from the nearest eligible institution of higher education offering a running start program, whichever is greater; and

(iii) High schools eligible for the small school funding enhancement in the omnibus appropriations act.

(b)(i) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, and only after the programs in (a) of this subsection are funded, a subsidy may be provided per college credit for eleventh and twelfth grade students ~~((or))~~, students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grade, and students participating in a bridge year under section 2 of this act, who have been deemed eligible for free or reduced-price lunch and are enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of subsidized credits per participating student shall be specified in the omnibus appropriations act, which must not exceed five credits.

(ii) Districts wishing to participate in the subsidy program must apply to the office of the superintendent of public

instruction by July 1st of each year and report the preliminary estimate of eligible students to receive the subsidy and the total number of projected credit hours.

(iii) The office of the superintendent of public instruction shall notify districts by September 1st of each school year if the district's students will receive the subsidy. If more districts apply than funding is available, the office of the superintendent of public instruction shall prioritize the district applications. The superintendent shall develop factors to determine priority including, but not limited to, the number of dual credit opportunities available for low-income students in the districts.

(c) Districts shall remit any allocations or subsidies on behalf of participating students under (a) and (b) of this subsection to the participating institution of higher education and those students shall not be required to pay for the credits.

(d) The minimum allocation and subsidy under this section is sixty-five dollars per quarter credit for credit-bearing postsecondary coursework. The office of the superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the public baccalaureate institutions shall review funding levels for the program every four years beginning in 2017 and recommend changes.

(e) Students may pay college in the high school fees with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(2) For the purposes of funding students enrolled in the college in the high school program in accordance with subsection (1) of this section, college in the high school is defined as a dual credit program located on a high school campus or in a high school environment in which a high school student, or a student participating in a bridge year under section 2 of this act, is able to earn both high school and postsecondary credit by completing postsecondary level courses with a passing grade.

(3) College in the high school programs may include both academic and career and technical education.

(4) College in the high school programs shall each be governed by a local contract between the district and the participating institution of higher education, in compliance with the rules adopted by the superintendent of public instruction under this section.

(5) The college in the high school program must include the provisions in this subsection.

(a) The high school and participating institution of higher education together shall define the criteria for student eligibility. The institution of higher education may charge tuition fees to participating students. If specific funding is provided in the omnibus appropriations act for the per credit allocations and per credit subsidies under subsection (1) of this section, the maximum per credit fee charged to any enrolled student may not exceed the amount of the per credit allocation or subsidy.

(b) The funds received by the participating institution of higher education may not be deemed tuition or operating fees and may be retained by the institution of higher education.

(c) Enrollment information on persons registered under this section must be maintained by the institution of higher education separately from other enrollment information and may not be included in official enrollment reports, nor may such persons be considered in any enrollment statistics that would affect higher education budgetary determinations.

(d) A school district must grant high school credit to a student enrolled in a program course if the student successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the student enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of successful completion of each program course shall be included in the student's secondary school records and transcript.

(e) A participating institution of higher education must grant college credit to a student enrolled in a program course if the student successfully completes the course. The college credit

shall be applied toward general education requirements or degree requirements at institutions of higher education. Evidence of successful completion of each program course must be included in the student's college transcript.

(f) Tenth, eleventh, and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the tenth, eleventh, or twelfth grades, and students participating in a bridge year under section 2 of this act, may participate in the college in the high school program.

(g) Participating school districts must provide general information about the college in the high school program to all students in grades nine through twelve and to the parents and guardians of those students.

(h) Full-time and part-time faculty at institutions of higher education, including adjunct faculty, are eligible to teach program courses.

(6) The superintendent of public instruction shall adopt rules for the administration of this section. The rules shall be jointly developed by the superintendent of public instruction, the state board for community and technical colleges, the student achievement council, and the public baccalaureate institutions. The association of Washington school principals must be consulted during the rules development. The rules must outline quality and eligibility standards that are informed by nationally recognized standards or models. In addition, the rules must encourage the maximum use of the program and may not narrow or limit the enrollment options.

(7) The definitions in this subsection apply throughout this section.

(a) "Institution of higher education" has the definition in RCW 28B.10.016, and also includes a public tribal college located in Washington and accredited by the Northwest commission on colleges and universities or another accrediting association recognized by the United States department of education.

(b) "Program course" means a college course offered in a high school under the college in the high school program.

Sec. 6. RCW 28A.600.310 and 2019 c 252 s 115 and 2019 c 176 s 2 are each reenacted and amended to read as follows:

(1)(a) Eleventh and twelfth grade students (~~(~~or~~)~~), students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades, and students participating in a bridge year under section 2 of this act, may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education.

(b) The course sections and programs offered as running start courses must also be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students offered at a high school campus.

(c) A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals or to learn the state learning standards. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the

course and hours of enrollment for that pupil.

(2)(a) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041:

(i) Running start students shall pay to the community or technical college all other mandatory fees as established by each community or technical college and, in addition, the state board for community and technical colleges may authorize a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041; and

(ii) All other institutions of higher education operating a running start program may charge running start students a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041 in addition to technology fees.

(b) The fees charged under this subsection (2) shall be prorated based on credit load.

(c) Students may pay fees under this subsection with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(3)(a) The institutions of higher education must make available fee waivers for low-income running start students. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(b)(i) By the beginning of the 2020-21 school year, school districts, upon knowledge of a low-income student's enrollment in running start, must provide documentation of the student's low-income status, under (a) of this subsection, directly to institutions of higher education.

(ii) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction, in consultation with the Washington student achievement council, shall develop a centralized process for school districts to provide

students' low-income status to institutions of higher education to meet the requirements of (b)(i) of this subsection.

(c) Institutions of higher education, in collaboration with relevant student associations, shall aim to have students who can benefit from fee waivers take advantage of these waivers. Institutions shall make every effort to communicate to students and their families the benefits of the waivers and provide assistance to students and their families on how to apply. Information about waivers shall, to the greatest extent possible, be incorporated into financial aid counseling, admission information, and individual billing statements. Institutions also shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass email messaging, social media, and outside marketing to ensure that information about waivers is visible, compelling, and reaches the maximum number of students and families that can benefit.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, participating institutions of higher education, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted

for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

Sec. 7. RCW 28A.600.330 and 1994 c 205 s 4 are each amended to read as follows:

(1) A pupil who enrolls in an institution of higher education in grade eleven may not enroll in postsecondary courses under RCW 28A.600.300 through 28A.600.390 for high school credit and postsecondary credit for more than the equivalent of the coursework for two academic years. A pupil who first enrolls in an institution of higher education in grade twelve may not enroll in postsecondary courses under this section for high school credit and postsecondary credit for more than the equivalent of the coursework for one academic year.

(2) The credit limitations in this section do not apply to students participating in the bridge year program created in section 2 of this act.

NEW SECTION. **Sec. 8.** This act expires July 31, 2023.

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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Hoff and Schmick.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5304 Prime Sponsor, Committee on Ways & Means: Providing reentry services to persons releasing from state and local institutions. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The legislature finds that when considering releasing persons from state and local institutions, realizing the safety of the public is the primary concern. The legislature also finds that the success of persons with behavioral health needs being released from confinement in a prison, jail, juvenile rehabilitation facility, state hospital, and other state and local institutions can be increased with access to continuity of medical assistance, supportive services, and other targeted assistance. The legislature finds that this act provides strategies to prevent interruption of medical assistance benefits and to allow for a seamless transfer between systems of care. The legislature further finds that this act removes stigmatizing language from the program created under RCW 72.09.370 and 71.24.470 and creates a work group to study how to expand the cost-effective strategies of this program to other populations and settings to enhance recovery, reduce recidivism, and improve safety.

Sec. 2. RCW 74.09.670 and 2016 c 154 s 2 are each amended to read as follows:

~~((The))~~ When the authority receives information that a person enrolled in medical assistance is confined in a setting in which federal financial participation is disallowed by the state's agreements with the federal government, the authority ~~((is directed to))~~ shall suspend, rather than terminate, medical assistance benefits ~~((by July 1, 2017,))~~ for these persons, including those who are incarcerated in a correctional institution as defined in RCW 9.94.049, or committed to a state hospital or other treatment facility. ~~((This must include the ability for a))~~ A person who is not currently enrolled in medical assistance must be allowed to apply for medical assistance in suspense status during ~~((incarceration))~~ confinement, and the ability to apply may not depend upon knowledge of the release or discharge date of the person. ~~((The authority must provide a progress report describing program design and a detailed fiscal estimate to the governor and~~

~~relevant committees of the legislature by December 1, 2016.))~~

Sec. 3. RCW 74.09.555 and 2019 c 325 s 4005 are each amended to read as follows:

(1) The authority shall adopt rules and policies providing that when persons ~~((with a mental disorder,))~~ who were enrolled in medical assistance immediately prior to confinement, or who become enrolled in medical assistance in suspense status during the period of confinement, are released from confinement, their medical assistance coverage ~~((will))~~ shall be fully reinstated ~~((on the day))~~ no later than at the moment of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law. The authority may reinstate medical assistance prior to the day of release provided that no federal funds are expended for any purpose that is not authorized by the state's agreements with the federal government.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, the department of children, youth, and families, managed care organizations, and behavioral health administrative services organizations, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for ~~((persons who are likely to be eligible for))~~ medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance

services (~~(immediately upon)~~) before their release from confinement; (~~and~~)

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons; and

(e) Assuring that notification of the person's release date, current location, and other appropriate information is provided to the person's managed care organization before the person's scheduled release from confinement, or as soon as practicable thereafter.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) (~~For purposes of this section, "likely to be eligible" means that a person:~~

~~(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or~~

~~(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.~~

~~(6))~~ The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person (~~(who is likely to be eligible)~~) for medicaid.

NEW SECTION. Sec. 4. (1) The health care authority shall apply for a waiver allowing the state to provide medicaid services to persons who are confined in a correctional institution as defined in RCW 9.94.049 or confined in a state hospital or other treatment facility up to 30 days prior to the person's release or discharge to the community. The purpose is to create continuity of care and provide reentry services.

(2) The health care authority shall consult with the work group established under section 9 of this act about how to optimize the waiver application and its chance of success, including by limiting its scope if deemed appropriate.

(3) The health care authority shall inform the governor and relevant committees of the legislature in writing when the waiver application is submitted and update them as to progress of the waiver at appropriate points.

(4) No provision of this section may be interpreted to require the health care authority to provide medicaid services to persons who are confined in a correctional institution, state hospital, or other treatment facility up to 30 days prior to the person's release or discharge unless the health care authority obtains final approval for its waiver application from the centers for medicare and medicaid services.

Sec. 5. RCW 9.94.049 and 1995 c 314 s 6 are each amended to read as follows:

(1) For the purposes of this chapter, the term "correctional institution" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including state prisons, county and local jails, juvenile detention centers, and other facilities operated by the department of corrections, department of children, youth, and families, or local governmental units primarily for the purposes of punishment, correction, or rehabilitation following conviction or adjudication of a criminal offense.

(2) For the purposes of RCW 9.94.043 and 9.94.045, "state correctional

institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons.

Sec. 6. RCW 72.09.370 and 2019 c 325 s 5025 are each amended to read as follows:

(1) The ~~((offender))~~ reentry community ~~((safety))~~ services program is established to provide intensive services to ~~((offenders))~~ persons identified under this subsection and to thereby promote successful reentry, public safety, and recovery. The secretary shall identify ~~((offenders))~~ persons in confinement or partial confinement who: (a) Are reasonably believed to ~~((be dangerous))~~ present a danger to themselves or others if released to the community without supportive services; and (b) have a mental disorder. In ~~((determining an offender's dangerousness))~~ evaluating these criteria, the secretary shall consider behavior known to the department and factors, based on research, that are linked to ~~((an increased))~~ risk ~~((for))~~ of dangerousness ~~((of offenders))~~ for persons with mental illnesses within the criminal justice system and shall include consideration of ~~((an offender's))~~ the person's history of substance use disorder or abuse.

(2) Prior to release of ~~((an offender))~~ a person identified under this section, a team consisting of representatives of the department of corrections, the health care authority, and, as necessary, the indeterminate sentence review board, divisions or administrations within the department of social and health services, specifically including the division of developmental disabilities, the appropriate managed care organization ~~((contracted with the health care authority, the appropriate))~~ or behavioral health administrative services organization, and ~~((the))~~ reentry community services providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the ~~((offender))~~ person upon release. In developing the plan, the ~~((offender))~~ person shall be offered assistance in executing a mental health advance directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of such

directive. The team may include a school district representative for ~~((offenders))~~ persons under the age of ~~((twenty-one))~~ 21. The team shall consult with the ~~((offender's))~~ person's counsel, if any, and, as appropriate, the ~~((offender's))~~ person's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific ~~((offender))~~ person. The team may recommend: (a) That the ~~((offender))~~ person be evaluated by ~~((the))~~ a designated crisis responder, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or substance use disorder or abuse treatment.

(3) Prior to release of ~~((an offender))~~ a person identified under this section, the team shall determine whether or not an evaluation by a designated crisis responder is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated crisis responder. The supporting documentation shall include the ~~((offender's))~~ person's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated crisis responder is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated crisis responder shall occur on the day of release if requested by the team, based upon new information or a change in the ~~((offender's))~~ person's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated crisis responder determines an emergency detention under chapter 71.05 RCW is necessary, the

department shall release the ~~((offender))~~ person only to a state hospital or to a consenting evaluation and treatment facility or secure withdrawal management and stabilization facility. The department shall arrange transportation of the ~~((offender))~~ person to the hospital or facility.

(7) If the designated crisis responder believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the ~~((offender))~~ person to appear at an evaluation and treatment facility or secure withdrawal management and stabilization facility. If a summons is issued, the ~~((offender))~~ person shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified ~~((evaluation and treatment))~~ facility.

(8) The secretary shall adopt rules to implement this section.

Sec. 7. RCW 71.24.470 and 2019 c 325 s 1030 are each amended to read as follows:

(1) The director shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the director deems necessary to assist ~~((offenders))~~ persons identified under RCW 72.09.370 for participation in the ~~((offender))~~ reentry community services program. The contracts may be with any qualified and appropriate entities. The director shall ensure the authority has coverage in all counties of the state for the purposes of providing reentry community services program services.

(2) The case manager has the authority to assist these ~~((offenders))~~ persons in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, assistance obtaining substance use disorder treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, peer services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The ~~((offender))~~ reentry community services program was formerly known as the community integration assistance program.

Sec. 8. RCW 71.24.480 and 2019 c 325 s 1031 are each amended to read as follows:

(1) A licensed or certified behavioral health agency acting in the course of the ~~((provider's))~~ agency's duties under this chapter ~~((, is))~~ and its individual employees are not liable for civil damages resulting from the injury or death of another caused by a participant in the ~~((offender))~~ reentry community services program who is a client of the ~~((provider or organization))~~ agency, unless the act or omission of the ~~((provider or organization))~~ agency or employee 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 or certified behavioral health agency shall report ~~((an offender's))~~ a reentry community services program participant'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 or certified behavioral health agency's mere act of treating a

participant in the (~~offender~~) reentry community (~~safety~~) services program is not negligence. Nothing in this subsection alters the licensed or certified behavioral health agency'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 or certified behavioral health agencies and their employees and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the (~~offender~~) reentry community (~~safety~~) services program" means a person who has been identified under RCW 72.09.370 as (~~an offender~~) a person who: (a) Is reasonably believed to (~~be dangerous~~) present a danger to himself or herself or others if released to the community without supportive services; and (b) has a mental disorder.

NEW SECTION. Sec. 9. A new section is added to chapter 71.24 RCW to read as follows:

(1) The authority shall convene a reentry services work group to consider ways to improve reentry services for persons with an identified behavioral health services need. The work group shall:

(a) Advise the authority on its waiver application under section 4 of this act;

(b) Develop a plan to assure notifications of the person's release date, current location, and other appropriate information are provided to the person's managed care organization before the person's scheduled release from confinement, or as soon as practicable thereafter, in accordance with RCW 74.09.555;

(c) Consider the value of expanding, replicating, or adapting the essential elements of the reentry community services program under RCW 72.09.370 and 71.24.470 to benefit new populations, such as:

(i) A larger group of incarcerated persons in the department of corrections than those who currently have the opportunity to participate;

(ii) State hospital patients committed under criminal insanity laws under chapter 10.77 RCW;

(iii) Involuntary treatment patients committed under chapter 71.05 RCW;

(iv) Persons committed to juvenile rehabilitation;

(v) Persons confined in jail; and

(vi) Other populations recommended by the work group;

(d) Consider whether modifications should be made to the reentry community services program;

(e) Identify potential costs and savings for the state and local governments which could be realized through the use of telehealth technology to provide behavioral health services, expansion or replication of the reentry community services program, or other reentry programs which are supported by evidence;

(f) Consider the sustainability of reentry or diversion services provided by pilot programs funded by contempt fines in *Trueblood, et al., v. Washington State DSHS*, No. 15-35462;

(g) Recommend a means of funding expanded reentry services; and

(h) Consider incorporation of peer services into the reentry community services programs.

(2) The authority shall invite participation in the work group by stakeholders including but not limited to representatives from: Disability rights Washington; behavioral health advocacy organizations; behavioral health peers; reentry community services providers; community behavioral health agencies; advocates for persons with developmental disabilities; the department of corrections; the department of children, youth, and families; the Washington association of sheriffs and police chiefs; prosecutors; defense attorneys; the Washington state association of counties; King county behavioral health and recovery division; the department of social and health services; state hospital employees who serve patients committed under chapters 10.77 and 71.05 RCW; the public safety review panel under RCW 10.77.270; managed care organizations; behavioral health administrative services organizations; jail administrators; the Washington statewide reentry council; the Washington state senate; the Washington state house of representatives; and the Washington state institute for public policy.

(3) The work group must provide a progress report to the governor and appropriate committees of the legislature by July 1, 2022, and a final report by December 1, 2023.

NEW SECTION. Sec. 10. The Washington state institute for public policy shall update its previous evaluations of the reentry community services program under RCW 72.09.370 and 71.24.470, and broaden its cost-benefit analysis to include impacts on the use of public services, and other factors. The institute shall collaborate with the work group established under section 9 of this act to determine research parameters and help the work group answer additional research questions including, but not limited to, the potential cost, benefit, and risks involved in expanding or replicating the reentry community services program; and what modifications to the program are most likely to prove advantageous based on the current state of knowledge about evidence-based, research-based, and promising programs. The department of corrections, health care authority, administrative office of the courts, King county, and department of social and health services must cooperate with the institute to facilitate access to data or other resources necessary to complete this work. The institute must provide a preliminary report by July 1, 2022, and a final report by November 1, 2023, to the governor and relevant committees of the legislature.

Sec. 11. RCW 72.09.270 and 2008 c 231 s 48 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every ~~((offender))~~ person who is committed to the jurisdiction of the department except:

(a) ~~((Offenders))~~ Persons who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) ~~((Offenders))~~ Persons who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all ~~((offenders))~~ persons using standardized

and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each ~~((offender))~~ person. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the ~~((offender))~~ person, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4) (a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than ~~((forty-five))~~ 45 days of being sentenced to the jurisdiction of the department of corrections.

(b) The ~~((offender's))~~ person's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than ~~((sixty))~~ 60 days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the ~~((offender's))~~ person's children and family;

(b) An individualized portfolio for each ~~((offender))~~ person that includes the ~~((offender's))~~ person's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the ~~((offender))~~ person during the period of incarceration through reentry into the community that addresses the needs of the ~~((offender))~~ person including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6) (a) Prior to discharge of any ~~((offender))~~ person, the department shall:

(i) Evaluate the ~~((offender's))~~ person's needs and, to the extent possible, connect the ~~((offender))~~

person with existing services and resources that meet those needs; and

(ii) Connect the ~~((offender))~~ person with a community justice center and/or community transition coordination network in the area in which the ~~((offender))~~ person will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in ~~((an offender's))~~ a person's individual reentry plan, the department shall maximize the period of partial confinement for the ~~((offender))~~ person as allowed pursuant to RCW 9.94A.728 to facilitate the ~~((offender's))~~ person's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the ~~((offender's))~~ person's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for ~~((an offender))~~ a person released to community custody, the department may ~~((not))~~ approve a residence location that is not in the ~~((offender's))~~ person's county of origin ~~((unless it is determined by the))~~ if the department determines that the ~~((offender's return to his or her county of origin would be inappropriate considering))~~ residence location would be appropriate based on any court-ordered condition of the ~~((offender's))~~ person's sentence, victim safety concerns, ~~((negative influences on the offender in the community, or the))~~ and factors that increase opportunities for successful reentry and long-term support including, but not limited to, location of family or other sponsoring persons or organizations that will support the ~~((offender))~~ person, availability of appropriate programming or treatment, and access to housing, employment, and prosocial influences on the person in the community.

(b) In implementing the provisions of this subsection, the department shall approve residence locations in a manner that will not cause any one county to be disproportionately impacted.

(c) If the ~~((offender))~~ person is not returned to his or her county of origin, the department shall provide the law and

justice council of the county in which the ~~((offender))~~ person is placed with a written explanation.

~~((c))~~ (d)(i) For purposes of this section, except as provided in (d)(ii) of this subsection, the ~~((offender's))~~ person's county of origin means the county of the ~~((offender's))~~ person's residence at the time of the person's first felony conviction in Washington state.

(ii) If the person is a homeless person as defined in RCW 43.185C.010, or the person's residence is unknown, then the person's county of origin means the county of the person's first felony conviction in Washington state.

(9) Nothing in this section creates a vested right in programming, education, or other services.

Sec. 12. RCW 43.380.020 and 2019 c 415 s 976 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the Washington statewide reentry council is created and located within the department for the purpose of promoting successful reentry of offenders after incarceration.

(2) Through the executive director that may be appointed by the council, the department shall administer the council by:

(a) Providing the council and its executive director use of the department's facilities; and

(b) Managing grants and other funds received, used, and disbursed by the council.

~~((3) Except during the 2019-2021 fiscal biennium, the department may not designate additional full-time staff to the administration of the council beyond the executive director.))"~~

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Caldier; Chandler and Dye.

MINORITY recommendation: Without recommendation. Signed by Representatives Rude and Schmick.

Referred to Committee on Rules for second reading.

March 31, 2021

SB 5312 Prime Sponsor, Senator Mullet:
Facilitating transit-oriented development
and increasing housing inventory.
Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Environment & Energy.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.70A.500 and 2012 1st sp.s. c 1s 310 are each amended to read as follows:

(1) The department of commerce shall provide management services for the growth management planning and environmental review fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant or loan program by other public agencies. The department shall develop the grant or loan criteria, monitor the grant or loan program, and select grant or loan recipients in consultation with state agencies participating in the grant or loan program through the provision of grant or loan funds or technical assistance.

(2) A grant or loan may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant or loan shall be provided to assist a county or city in paying for the cost of preparing an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulation, monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant or loan, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan;

(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

(f) Provide local funding, which may include financial participation by the private sector.

(4) In awarding grants or loans, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) Identification and monitoring of system capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of statewide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

(f) Programs for effective citizen and neighborhood involvement that contribute to greater likelihood that planning decisions can be implemented with community support;

(g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans; or

(h) Environmental review that addresses the impacts of increased density or intensity of comprehensive plans, subarea plans, or receiving areas designated by a city or town under the regional transfer of development rights program in chapter 43.362 RCW.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant or loan recipients to facilitate state and local project review processes that will implement the projects receiving grants or loans under this section.

(7)(a) Appropriations to the growth management planning and environmental review fund established in RCW 36.70A.490 for the purpose of grants to cities to facilitate transit-oriented development may be used to pay for the costs associated with the preparation of state environmental policy act environmental impact statements, planned action ordinances, subarea plans, costs associated with the utilization of other tools under the state environmental policy act, and the costs of local code adoption and implementation of such efforts.

(b) Grant awards may only fund efforts that address environmental impacts and

consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan.

(8) The department shall prioritize applications for grants to facilitate transit-oriented development that maximize the following policy objectives in the area covered by a proposal:

(a) The total number of housing units authorized for new development;

(b) The proximity and quality of transit access in the area;

(c) Plans that authorize up to six stories of building height;

(d) Plans that authorize ground floor retail with housing above;

(e) Plans in areas that minimize or eliminate on-site parking requirements;

(f) Existence or establishment of incentive zoning, mandatory affordability, or other tools to promote low-income housing in the area;

(g) Plans that include dedicated policies to support public or nonprofit funded low-income or workforce housing; and

(h) Plans designed to maximize and increase the variety of allowable housing types and expected sale or rental rates.

(9) For purposes of this section, "transit access" includes walkable access to:

(a) Light rail and other fixed guideway rail systems;

(b) Bus rapid transit;

(c) High frequency bus service; or

(d) Park and ride lots.

Sec. 2. RCW 36.70A.600 and 2020 c 173 s 1 are each amended to read as follows:

(1) A city planning pursuant to RCW 36.70A.040 is encouraged to take the following actions in order to increase its residential building capacity:

(a) Authorize development in one or more areas of not fewer than five hundred acres that include at least one train station served by commuter rail or light rail with an average of at least fifty residential units per acre that require no more than an average of one on-site

parking space per two bedrooms in the portions of multifamily zones that are located within the areas;

(b) Authorize development in one or more areas of not fewer than two hundred acres in cities with a population greater than forty thousand or not fewer than one hundred acres in cities with a population less than forty thousand that include at least one bus stop served by scheduled bus service of at least four times per hour for twelve or more hours per day with an average of at least twenty-five residential units per acre that require no more than an average of one on-site parking space per two bedrooms in portions of the multifamily zones that are located within the areas;

(c) Authorize at least one duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard apartment on each parcel in one or more zoning districts that permit single-family residences unless a city documents a specific infrastructure of physical constraint that would make this requirement unfeasible for a particular parcel;

(d) Authorize a duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard apartment on one or more parcels for which they are not currently authorized;

(e) Authorize cluster zoning or lot size averaging in all zoning districts that permit single-family residences;

(f) Adopt a subarea plan pursuant to RCW 43.21C.420;

(g) Adopt a planned action pursuant to RCW 43.21C.440(1)(b)(ii), except that an environmental impact statement pursuant to RCW 43.21C.030 is not required for such an action;

(h) Adopt increases in categorical exemptions pursuant to RCW 43.21C.229 for residential or mixed-use development;

(i) Adopt a form-based code in one or more zoning districts that permit residential uses. "Form-based code" means a land development regulation that uses physical form, rather than separation of use, as the organizing principle for the code;

(j) Authorize a duplex on each corner lot within all zoning districts that permit single-family residences;

(k) Allow for the division or redivision of land into the maximum number of lots through the short subdivision process provided in chapter 58.17 RCW;

(l) Authorize a minimum net density of six dwelling units per acre in all residential zones, where the residential development capacity will increase within the city. For purposes of this subsection, the calculation of net density does not include the square footage of areas that are otherwise prohibited from development, such as critical areas, the area of buffers around critical areas, and the area of roads and similar features;

(m) Create one or more zoning districts of medium density in which individual lots may be no larger than three thousand five hundred square feet and single-family residences may be no larger than one thousand two hundred square feet;

(n) Authorize accessory dwelling units in one or more zoning districts in which they are currently prohibited;

(o) Remove minimum residential parking requirements related to accessory dwelling units;

(p) Remove owner occupancy requirements related to accessory dwelling units;

(q) Adopt new square footage requirements related to accessory dwelling units that are less restrictive than existing square footage requirements related to accessory dwelling units;

(r) Adopt maximum allowable exemption levels in WAC 197-11-800(1) as it existed on June 11, 2020, or such subsequent date as may be provided by the department of ecology by rule, consistent with the purposes of this section;

(s) Adopt standards for administrative approval of final plats pursuant to RCW 58.17.100;

(t) Adopt ordinances authorizing administrative review of preliminary plats pursuant to RCW 58.17.095;

(u) Adopt other permit process improvements where it is demonstrated that the code, development regulation, or ordinance changes will result in a more efficient permit process for customers;

(v) Update use matrices and allowable use tables that eliminate conditional use permits and administrative conditional use permits for all housing types, including single-family homes, townhomes, multifamily housing, low-income housing, and senior housing, but excluding essential public facilities;

(w) Allow off-street parking to compensate for lack of on-street parking when private roads are utilized or a parking demand study shows that less parking is required for the project;

(x) Develop a local program that offers homeowners a combination of financing, design, permitting, or construction support to build accessory dwelling units. A city may condition this program on a requirement to provide the unit for affordable home ownership or rent the accessory dwelling unit for a defined period of time to either tenants in a housing subsidy program as defined in RCW 43.31.605(14) or to tenants whose income is less than eighty percent of the city or county median family income. If the city includes an affordability requirement under the program, it must provide additional incentives, such as:

- (i) Density bonuses;
- (ii) Height and bulk bonuses;
- (iii) Fee waivers or exemptions;
- (iv) Parking reductions; or
- (v) Expedited permitting; and

(y) Develop a local program that offers homeowners a combination of financing, design, permitting, or construction support to convert a single-family home into a duplex, triplex, or quadplex where those housing types are authorized. A local government may condition this program on a requirement to provide a certain number of units for affordable home ownership or to rent a certain number of the newly created units for a defined period of time to either tenants in a housing subsidy program as defined in RCW 43.31.605(14) or to tenants whose income is less than eighty percent of the city or county median family income. If the city includes an affordability requirement, it must provide additional incentives, such as:

- (i) Density bonuses;
- (ii) Height and bulk bonuses;
- (iii) Fee waivers or exemptions;

(iv) Parking reductions; or

(v) Expedited permitting.

(2) A city planning pursuant to RCW 36.70A.040 may adopt a housing action plan as described in this subsection. The goal of any such housing plan must be to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market. A housing action plan may utilize data compiled pursuant to RCW 36.70A.610. The housing action plan should:

(a) Quantify existing and projected housing needs for all income levels, including extremely low-income households, with documentation of housing and household characteristics, and cost-burdened households;

(b) Develop strategies to increase the supply of housing, and variety of housing types, needed to serve the housing needs identified in (a) of this subsection;

(c) Analyze population and employment trends, with documentation of projections;

(d) Consider strategies to minimize displacement of low-income residents resulting from redevelopment;

(e) Review and evaluate the current housing element adopted pursuant to RCW 36.70A.070, including an evaluation of success in attaining planned housing types and units, achievement of goals and policies, and implementation of the schedule of programs and actions;

(f) Provide for participation and input from community members, community groups, local builders, local realtors, nonprofit housing advocates, and local religious groups; and

(g) Include a schedule of programs and actions to implement the recommendations of the housing action plan.

(3) If adopted by April 1, 2023, ordinances, amendments to development regulations, and other nonproject actions taken by a city to implement the actions specified in subsection (1) of this section, with the exception of the action specified in subsection (1)(f) of this section, are not subject to administrative or judicial appeal under chapter 43.21C RCW.

(4) Any action taken by a city prior to April 1, 2023, to amend their comprehensive plan, or adopt or amend ordinances or development regulations, solely to enact provisions under subsection (1) of this section is not subject to legal challenge under this chapter.

(5) In taking action under subsection (1) of this section, cities are encouraged to utilize strategies that increase residential building capacity in areas with frequent transit service and with the transportation and utility infrastructure that supports the additional residential building capacity.

(6) A city that is planning to take at least two actions under subsection (1) of this section, and that action will occur between July 28, 2019, and April 1, ((2021)) 2025, is eligible to apply to the department for planning grant assistance of up to one hundred thousand dollars, subject to the availability of funds appropriated for that purpose. The department shall develop grant criteria to ensure that grant funds awarded are proportionate to the level of effort proposed by a city, and the potential increase in housing supply or regulatory streamlining that could be achieved. Funding may be provided in advance of, and to support, adoption of policies or ordinances consistent with this section. A city can request, and the department may award, more than one hundred thousand dollars for applications that demonstrate extraordinary potential to increase housing supply or regulatory streamlining.

(7) A city seeking to develop a housing action plan under subsection (2) of this section is eligible to apply to the department for up to one hundred thousand dollars.

(8) The department shall establish grant award amounts under subsections (6) and (7) of this section based on the expected number of cities that will seek grant assistance, to ensure that all cities can receive some level of grant support. If funding capacity allows, the department may consider accepting and funding applications from cities with a population of less than twenty thousand if the actions proposed in the application will create a significant amount of housing capacity or regulatory streamlining and are consistent with the actions in this section.

(9) In implementing chapter 348, Laws of 2019, cities are encouraged to prioritize the creation of affordable, inclusive neighborhoods and to consider the risk of residential displacement, particularly in neighborhoods with communities at high risk of displacement."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Jacobsen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Dye and Schmick.

MINORITY recommendation: Without recommendation. Signed by Representatives Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Hoff; Rude and Steele.

Referred to Committee on Rules for second reading.

April 1, 2021

SSB 5317

Prime Sponsor, Committee on Agriculture, Water, Natural Resources & Parks: Concerning pesticide registration and pesticide licensing fees. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Rural Development, Agriculture & Natural Resources.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 15.58.070 and 2008 c 285 s 15 are each amended to read as follows:

(1) All registrations issued by the department expire December 31st of the following year except that registrations issued by the department to a registrant who is applying to register an additional pesticide during the second year of the registrant's registration period shall expire December 31st of that year.

(2) An application for registration must be accompanied by a fee of ((three)) six hundred ((ninety)) fifty dollars for each pesticide, except that a registrant who is applying to register an additional pesticide during the year the

registrant's registration expires shall pay a fee of ~~((one))~~ three hundred ~~((ninety-five))~~ twenty-five dollars for each additional pesticide.

(3) Fees must be deposited in the agricultural local fund to support the activities of the pesticide program within the department.

(4) Any registration approved by the director and in effect on the last day of the registration period, for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110.

(5) The department must complete and post on its website a timeline for processing completed pesticide registrations.

Sec. 2. RCW 15.58.180 and 2013 c 144 s 10 are each amended to read as follows:

(1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license expires on the business license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state must obtain a pesticide dealer license for his or her principal out-of-state location or outlet, but such a licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license must be accompanied by a fee of ~~((sixty-seven))~~ eighty-eight dollars and must be made through the business licensing system and must include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation must be

given on the application. The application must state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when pesticides are dispensed only through apparatuses used for pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter ~~((70-105))~~ 70A.300 RCW.

Sec. 3. RCW 15.58.200 and 2008 c 285 s 17 are each amended to read as follows:

The director shall require each pesticide dealer manager to demonstrate to the director knowledge of pesticide laws and rules; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license must be accompanied by a fee of ~~((thirty-three))~~ thirty-eight dollars. The pesticide dealer manager license expires annually on a date set by rule by the director.

Sec. 4. RCW 15.58.205 and 2008 c 285 s 18 are each amended to read as follows:

(1) No individual may perform services as a structural pest inspector or advertise that they perform services of a structural pest inspector without obtaining a structural pest inspector license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the

director and must be accompanied by a fee of (~~sixty~~) seventy-eight dollars.

(2) The following are exempt from the application fee requirement of this section when acting within the authorities of their existing licenses issued under this chapter or chapter 17.21 RCW: Licensed pest control consultants; licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators.

(3) The following are exempt from the structural pest inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if the inspections are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of the damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest inspector licensing requirement.

(4) A structural pest inspector license is not valid for conducting a complete wood destroying organism inspection unless the inspector owns or is employed by a business with a structural pest inspection company license.

Sec. 5. RCW 15.58.210 and 2008 c 285 s 19 are each amended to read as follows:

(1) No individual may perform services as a pest control consultant without obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of (~~sixty~~) sixty-eight dollars.

(2) The following are exempt from the licensing requirements of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental

capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet.

Sec. 6. RCW 15.58.220 and 2008 c 285 s 20 are each amended to read as follows:

For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant. No person may act as a public pest control consultant without first obtaining a license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of (~~thirty-three~~) forty-three dollars. Federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or a duly authorized representative, public pest control consultants licensed and working in the health vector field, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision.

Sec. 7. RCW 15.58.411 and 1997 c 242 s 8 are each amended to read as follows:

~~(All)~~ (1) Except as otherwise provided for in this section, all license fees collected under this chapter shall be paid to the director for use exclusively in the enforcement of this chapter.

(2) In addition to any other fees the department may collect under this chapter, the department shall collect a fee of seven dollars for each license issued by the department under this chapter. The department shall transmit the seven dollar fee required by this subsection to Washington State University for the purpose of providing a pesticide safety education program to educate and train pesticide licensees and prospective licensees.

(3) The department shall engage with the regulated community on the status of license fees established in this chapter, including consideration of future increases, in coordination with a stakeholder work group.

(4) All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund.

Sec. 8. RCW 17.21.070 and 2008 c 285 s 21 are each amended to read as follows:

It is unlawful for any person to engage in the business of applying pesticides to the land of another without a commercial pesticide applicator license. Application for a commercial applicator license must be accompanied by a fee of two hundred ~~((fifteen))~~ forty-three dollars and in addition a fee of twenty-seven dollars for each apparatus, exclusive of one, used by the applicant in the application of pesticides.

Sec. 9. RCW 17.21.110 and 2008 c 285 s 22 are each amended to read as follows:

It is unlawful for any person to act as an employee of a commercial pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under this chapter for the application of any pesticide, without having obtained a commercial pesticide operator license from the director. The commercial pesticide operator license is in addition to any other license or permit required by law for the operation or use of any such apparatus. Application for a commercial operator license must be accompanied by a fee of ~~((sixty-seven))~~ seventy-eight dollars. This section does not apply to any individual who is a licensed commercial pesticide applicator.

Sec. 10. RCW 17.21.122 and 2008 c 285 s 23 are each amended to read as follows:

It is unlawful for any person to act as a private-commercial pesticide applicator without having obtained a private-commercial pesticide applicator license from the director. Application for a private-commercial pesticide applicator license must be accompanied by a fee of ~~((thirty-three))~~ thirty-eight dollars.

Sec. 11. RCW 17.21.126 and 2008 c 285 s 24 are each amended to read as follows:

It is unlawful for any person to act as a private applicator, limited private applicator, or rancher private applicator without first complying with requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the pesticide applicator or other persons, for each specific pesticide use.

(1) Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides for which the private applicator, limited private applicator, or rancher private applicator is certified must be relative to hazards of the particular type of application, class of pesticides, or handling procedure. In determining these standards the director must take into consideration standards of the EPA and is authorized to adopt these standards by rule.

(2) Application for a private applicator ~~((or a limited private applicator))~~ license must be accompanied by a fee of ~~((thirty-three))~~ thirty-eight dollars. Application for a limited private applicator license must be accompanied by a fee of thirty-three dollars. Application for a rancher private applicator license must be accompanied by a fee of one hundred three dollars. Individuals with a valid certified applicator license, pest control consultant license, or dealer manager license who qualify in the appropriate statewide or agricultural license categories are exempt from the private applicator, limited private applicator, or rancher private applicator fee requirements. However, licensed public pesticide operators, otherwise exempted from the public pesticide operator license fee requirement, are not also exempted from the fee requirements under this subsection.

Sec. 12. RCW 17.21.129 and 2008 c 285 s 25 are each amended to read as follows:

Except as provided in RCW 17.21.203, it is unlawful for a person to use or supervise the use of any experimental use pesticide or any restricted use pesticide on small experimental plots for research purposes when no charge is made for the pesticide and its application without a demonstration and research applicator's license.

(1) Application for a demonstration and research license must be accompanied by a fee of ~~((thirty-three))~~ forty-three dollars.

(2) Persons licensed under this section are exempt from the requirements of RCW 17.21.160, 17.21.170, and 17.21.180.

Sec. 13. RCW 17.21.220 and 2008 c 285 s 26 are each amended to read as follows:

(1) All state agencies, municipal corporations, and public utilities or any other governmental agencies are subject to this chapter and its rules.

(2) It is unlawful for any employee of a state agency, municipal corporation, public utility, or any other government agency to use or to supervise the use of any restricted use pesticide, or any pesticide by means of an apparatus, without having obtained a public operator license from the director. Application for a public operator license must be accompanied by a fee of ~~((thirty-three))~~ forty-three dollars. The fee does not apply to public operators licensed and working in the health vector field. The public operator license is valid only when the operator is acting as an employee of a government agency.

(3) The jurisdictional health officer or his or her duly authorized representative is exempt from this licensing provision when applying pesticides that are not restricted use pesticides to control pests other than weeds.

(4) Agencies, municipal corporations, and public utilities are subject to legal recourse by any person damaged by such application of any pesticide, and action may be brought in the county where the damage or some part of the damage occurred.

Sec. 14. RCW 17.21.280 and 1997 c 242 s 18 are each amended to read as follows:

(1) Except as provided in subsections (2) and (4) of this section, all moneys collected under the provisions of this chapter shall be paid to the director and deposited in the agricultural local fund, RCW 43.23.230, for use exclusively in the enforcement of this chapter.

(2) In addition to any other fees the department may collect under this chapter, the department shall collect a fee of seven dollars for each license issued by the department under this chapter. The department shall transmit the seven dollar fee required by this subsection to Washington State University for the purpose of providing a pesticide safety education program to educate and train pesticide licensees and prospective licensees.

(3) The department shall engage with the regulated community on the status of license fees established in this chapter, including consideration of future

increases, in coordination with a stakeholder work group.

(4) All moneys collected for civil penalties levied under RCW 17.21.315 shall be deposited in the state general fund. All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW.

NEW SECTION. Sec. 15. By December 31, 2022, the department of agriculture shall report to the legislature, in accordance with RCW 43.01.036, on the status of the fee structure for pesticide licenses. At a minimum, the report must include an outlook for potential future fee needs and describe how the department of agriculture has engaged with the regulated community on the topic of pesticide license fees in coordination with a stakeholder work group.

NEW SECTION. Sec. 16. This act takes effect November 1, 2021. All new or renewal applications for licensure, certification, or registration under chapter 17.21 or 15.58 RCW received on or after the effective date of this section are subject to the provisions of this act, including all fees required by this act."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

SSB 5318

Prime Sponsor, Committee on Agriculture, Water, Natural Resources & Parks; Concerning fertilizer fees. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 15.54.275 and 2013 c 144 s 8 are each amended to read as follows:

(1) No person may distribute a bulk fertilizer in this state until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes bulk fertilizer in Washington state. An application for each location must be filed on forms provided by the business licensing system established under chapter 19.02 RCW and must be accompanied by an annual fee of ~~((twenty-five))~~ fifty dollars per location. The license expires on the business license expiration date.

(2) An application for license must include the following:

(a) The name and address of licensee.

(b) Any other information required by the department by rule.

(3) The name and address shown on the license must be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to the business license expiration date, a delinquency fee of ~~((twenty-five))~~ fifty dollars must be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. The assessment of this delinquency fee does not prevent the department from taking any other action as provided for in this chapter. ~~The penalty does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license.)~~

Sec. 2. RCW 15.54.325 and 2020 c 20 s 1002 are each amended to read as follows:

(1) No person may distribute in this state a commercial fertilizer until it has been registered with the department by the producer, importer, or packager of that product.

(2) An application for registration must be made on a form furnished by the department and must include the following:

(a) The product name;

(b) The brand and grade;

(c) The guaranteed analysis;

(d) Name, address, and phone number of the registrant;

(e) A label for each product being registered;

(f) Identification of those products that are (i) waste-derived fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer materials containing phosphates;

(g) The concentration of each metal, for which standards are established under RCW 15.54.800, in each product being registered, unless the product is (i) anhydrous ammonia or a solution derived solely from dissolving anhydrous ammonia in water, (ii) a customer-formula fertilizer containing only registered commercial fertilizers, or (iii) a packaged commercial fertilizer whose plant nutrient content is present in the form of a single chemical compound which is registered in compliance with this chapter and the product is not blended with any other material. The provisions of (g)(i) of this subsection do not apply if the anhydrous ammonia is derived in whole or in part from waste such that the fertilizer is a "waste-derived fertilizer" as defined in RCW 15.54.270. Verification of a registration relied on by an applicant under (g)(iii) of this subsection must be submitted with the application;

(h) If a waste-derived fertilizer or micronutrient fertilizer, information to ensure the product complies with chapter 70A.300 RCW and the resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq.; and

(i) Any other information required by the department by rule.

(3) All companies planning to mix customer-formula fertilizers shall include the statement "customer-formula grade mixes" under the column headed "product name" on the product registration application form. All customer-formula fertilizers sold under one brand name shall be considered one product.

(4) Registrations are issued by the department for a two-year period beginning on July 1st of a given year and ending twenty-four months later on July 1st, except that registrations issued to a registrant who applies to register an additional product during the last twelve months of the registrant's period expire on the next July 1st.

(5) An application for a new registration must be accompanied by a fee

of one hundred fifty dollars for each product.

(6) Application for renewal of registration is due July 1st of each registration period and must be accompanied by a renewal fee of one hundred twenty dollars for each product. If an application for renewal is not received by the department by the due date, a late fee of ~~((ten))~~ fifty dollars per product is added to the original fee and must be paid by the applicant before the renewal registration may be issued. ~~((A late fee does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of the prior registration.))~~ Payment of a late fee does not prevent the department from taking any action authorized by this chapter for the violation.

Sec. 3. RCW 15.54.350 and 1993 c 183 s 6 are each amended to read as follows:

(1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants or nonlicensees an inspection fee of ~~((fifteen))~~ twenty cents per ton of lime and ~~((thirty))~~ thirty-five cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) Distribution of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant or licensee who distributes to a nonregistrant or nonlicensee is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer.

Sec. 4. RCW 15.54.362 and 2008 c 292 s 3 are each amended to read as follows:

(1) Every registrant or licensee who distributes commercial fertilizer in this state must file a semiannual report on forms provided by the department stating the number of net tons of each commercial fertilizer distributed in this state.

(a) For the period January 1st through June 30th of each year, the report is due on July 31st of that year; and

(b) For the period July 1st through December 31st of each year, the report is due on January 31st of the following year.

(2) Upon permission of the department, a person distributing in the state less than one hundred tons for each six-month period during any annual reporting period of July 1st through June 30th may submit an annual report on a form provided by the department that is due on the July 31st following the period. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

~~((2))~~ (3) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state must include the inspection fees with each semiannual or annual report. If in an annual reporting period a registrant or licensee distributes less than ~~((eighty-three))~~ one hundred forty-three tons of commercial fertilizer or less than ~~((one hundred sixty-seven))~~ two hundred fifty tons of commercial lime or equivalent combination of the two, the registrant or licensee must pay the minimum inspection fee of ~~((twenty-five))~~ fifty dollars.

~~((3))~~ (4) The department may, upon request, require registrants or licensees to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

~~((4))~~ (5) If the semiannual or annual report indicates that zero tons of commercial fertilizer were distributed during the reporting period, the person responsible for completing the report must pay a filing fee of twelve dollars and fifty cents for a semiannual report or twenty-five dollars for an annual report.

(6)(a) If a complete report is not received by the due date, the person responsible for filing the report must pay a late fee of ~~((twenty-five))~~ fifty dollars.

(b) If the appropriate inspection fees are not received by the due date, the person responsible for paying the inspection fee must pay a late fee equal to ten percent of the inspection fee owed or ~~((twenty-five))~~ fifty dollars, whichever is greater.

~~((c) Payment of a late fee does not prevent the department from taking any~~

~~other action authorized by this chapter for the violation.~~

~~(5))~~ (7) It is a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is authorized and which shall be as an action at law in the name of the director of the department.

(8) Payment of late fees or filing fees provided for under this section does not prevent the department from taking any other action authorized by this chapter for the violation.

NEW SECTION. Sec. 5. All new or renewal applications for registration under this act received on or after the effective date of this section are subject to the provisions of this act, including all fees required by this act.

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 June 1, 2021."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5321 Prime Sponsor, Committee on Higher Education & Workforce Development: Expanding access to the college bound scholarship. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on College & Workforce Development.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature enacted the college bound scholarship program in 2007 to encourage all Washington students to dream big by creating a guaranteed four-year tuition scholarship program for students from low-income families. The legislature finds the program has been successful in achieving this goal. A report by the Washington state institute for public policy found that the scholarship increases high school graduation rates, probability of on-time college enrollment, college persistence, and college graduation rates. However, more than one quarter of eligible students are unable to access the scholarship by failing to sign the pledge required by the program. The legislature finds that the pledge has become an unintended barrier to entry, a problem made more acute as students are receiving their education remotely during the COVID-19 pandemic and have less access to school teachers, counselors, and peers. Therefore, the legislature intends with this act to remove the pledge as an eligibility requirement while retaining the requirement that students maintain a "C" average for consideration of admission to a public or private four-year higher education institution and avoid serious interactions with the criminal justice system for four years. In order to ensure that the legislature will fulfill its promise to provide a scholarship upon graduation, the legislature intends by this act to create a statutory contractual right for students who fulfill scholarship requirements that vests when the student becomes first eligible for the scholarship.

Sec. 2. RCW 28B.118.010 and 2019 c 406 s 44 and 2019 c 298 s 1 are each reenacted and amended to read as follows:

The office of student financial assistance shall design the Washington college bound scholarship program in accordance with this section and in alignment with the Washington college grant program in chapter 28B.92 RCW unless otherwise provided in this section. The right of an eligible student to receive a college bound scholarship

vests upon enrollment in the program that is earned by meeting the requirements of this section as it exists at the time of the student's enrollment under subsection (2) of this section.

(1) "Eligible students" are those students who:

(a) Qualify for free or reduced-price lunches or are enrolled at schools using provision 2 of the national school lunch act or the community eligibility provision under section 104(a) of the federal health, hunger-free kids act of 2010.

(i) If a student qualifies in the seventh (~~or~~), eighth, or ninth grade, the student remains eligible even if the student does not receive free or reduced-price lunches thereafter or if the student is no longer enrolled at a school using provision 2 of the national school lunch act or the community eligibility provision under section 104(a) of the federal health, hunger-free kids act of 2010.

(ii) Beginning in the ((2019-20)) 2021-22 academic year, if a student qualifies for free or reduced-price lunches in the ((ninth)) 10th grade and was previously ineligible during the seventh (~~or~~), eighth, or ninth grade while he or she was a student in Washington, the student is eligible for the college bound scholarship program;

(b) Are dependent pursuant to chapter 13.34 RCW and:

(i) In grade seven through twelve; or

(ii) Are between the ages of eighteen and twenty-one and have not graduated from high school; or

(c) Were dependent pursuant to chapter 13.34 RCW and were adopted between the ages of fourteen and eighteen with a negotiated adoption agreement that includes continued eligibility for the Washington state college bound scholarship program pursuant to RCW 74.13A.025.

~~(2) ((Eligible students and the students' parents or guardians shall be notified of the student's eligibility for the Washington college bound scholarship program. Students and the students' parents or guardians shall also be notified of the requirements for award of the scholarship.~~

~~(3) (a) To be eligible for a Washington college bound scholarship, a student eligible under subsection (1)(a)(i) of this section must sign a pledge during seventh or eighth grade or a student eligible under subsection (1)(a)(ii) of this section must sign a pledge during ninth grade. The pledge must include a commitment to graduate from high school with at least a C average and with no felony convictions. The pledge must be witnessed by a parent or guardian and forwarded to the office of student financial assistance by mail or electronically, as indicated on the pledge form.~~

~~(b)(i) Beginning in the 2018-19 academic year, the office of student financial assistance shall make multiple attempts to secure the signature of the student's parent or guardian for the purpose of witnessing the pledge.~~

~~(ii) If the signature of the student's parent or guardian is not obtained, the office of student financial assistance may partner with the school counselor or administrator to secure the parent's or guardian's signature to witness the pledge. The school counselor or administrator shall make multiple attempts via all phone numbers, email addresses, and mailing addresses on record to secure the parent's or guardian's signature. All attempts to contact the parent or guardian must be documented and maintained in the student's official file.~~

~~(iii) If a parent's or guardian's signature is still not obtained, the school counselor or administrator shall indicate to the office of student financial assistance the nature of the unsuccessful efforts to contact the student's parent or guardian and the reasons the signature is not available. Then the school counselor or administrator may witness the pledge unless the parent or guardian has indicated that he or she does not wish for the student to participate in the program.~~

~~(e) A) (a) Every eligible student ((eligible under subsection (1)(b) of this section)) shall be automatically enrolled by the office of student financial assistance, with no action necessary by the student ((or the)), student's family, ((and the enrollment form must be forwarded by the department of social and health services to the office of student financial assistance by~~

~~mail or electronically, as indicated on the form)) or student's guardians.~~

(b) Eligible students and the students' parents or guardians shall be notified of the student's enrollment in the Washington college bound scholarship program and the requirements for award of the scholarship by the office of student financial assistance. To the maximum extent practicable, an eligible student must acknowledge enrollment in the college bound scholarship program and receipt of the requirements for award of the scholarship.

(c) The office of the superintendent of public instruction and the department of children, youth, and families must provide the office of student financial assistance with a list of eligible students when requested. The office of the superintendent of public instruction shall also provide school districts with a list of eligible students from that school district to implement the requirements of chapter 13, Laws of 2020.

(d) The office of student financial assistance must determine the most effective methods, including timing and frequency, to notify eligible students of enrollment in the Washington college bound scholarship program. The office of student financial assistance must take reasonable steps to ensure that eligible students acknowledge enrollment in the college bound scholarship program and receipt of the requirements for award of the scholarship. The office of student financial assistance shall also make available to every school district information, brochures, and posters to increase awareness and to enable school districts to notify eligible students directly or through school teachers, counselors, or school activities.

~~((4) (a) Scholarships shall be awarded to)) (3) Except as provided in subsection (4) of this section, an eligible student ((s) graduating from public high schools, approved private high schools under chapter 28A.195 RCW, or who received home-based instruction under chapter 28A.200 RCW.~~

~~(b) (i) To receive the Washington college bound scholarship, a student must graduate with at least a "C" average)) must:~~

(a) (i) Graduate from a public high school ((or)) under RCW 28A.150.010, an approved private high school under chapter 28A.195 RCW in Washington, or

have received home-based instruction under chapter 28A.200 RCW ((, must have)); and

(ii) Beginning with eligible students enrolling in a postsecondary education institution for the first time during the 2021-22 academic year, graduate with at least a "C" average for consideration of admission to a public or private four-year institution of higher education;

(b) Have no felony convictions ((, and must be));

(c) Be a resident student as defined in RCW 28B.15.012(2) (a) through (e) ((, A)); and

(d) Have a family income that does not exceed 65 percent of the state median family income at the time of high school graduation.

(4) (a) An eligible student who ((is eligible to receive the Washington college bound scholarship because the student)) is a resident student under RCW 28B.15.012(2) (e) must also provide the institution, as defined in RCW 28B.15.012, an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses.

~~(((iii)) (b) For eligible ((children)) students as defined in subsection (1) (b) and (c) of this section, ((to receive the Washington college bound scholarship,)) a student ((must have received)) may also meet the requirement in subsection (3) (a) of this section by receiving a high school equivalency certificate as provided in RCW 28B.50.536 ((or have graduated with at least a "C" average from a public high school or an approved private high school under chapter 28A.195 RCW in Washington or have received home-based instruction under chapter 28A.200 RCW, must have no felony convictions, and must be a resident student as defined in RCW 28B.15.012(2) (a) through (e))).~~

(c) For a student who does not meet the "C" average requirement, and who completes fewer than two quarters in the running start program, under chapter 28A.600 RCW, the student's first quarter of running start course grades must be excluded from the student's overall grade point average for purposes of determining

~~((their eligibility to receive the scholarship)) if the requirement in subsection (3) (a) of this section is met.~~

~~(5) ((A student's family income will be assessed upon graduation before awarding the scholarship. If at graduation from high school the student's family income does not exceed sixty-five percent of the state median family income, scholarship award amounts shall be as provided in this section.~~

~~(6)) (a) For students attending two or four-year institutions of higher education as defined in RCW 28B.10.016, the value of the award shall be (i) the difference between the student's tuition and required fees, less the value of any state-funded grant, scholarship, or waiver assistance the student receives; (ii) plus five hundred dollars for books and materials.~~

(b) For students attending private four-year institutions of higher education in Washington, the award amount shall be the representative average of awards granted to students in public research universities in Washington or the representative average of awards granted to students in public research universities in Washington in the 2014-15 academic year, whichever is greater.

(c) For students attending private vocational schools in Washington, the award amount shall be the representative average of awards granted to students in public community and technical colleges in Washington or the representative average of awards granted to students in public community and technical colleges in Washington in the 2014-15 academic year, whichever is greater.

~~((7) Recipients)) (6) Eligible students must enroll no later than the fall term, as defined by the institution of higher education, one academic year following high school graduation. Eligible students may receive no more than four full-time years' worth of scholarship awards within a five-year period.~~

~~((8)) (7) Institutions of higher education shall award the student all need-based and merit-based financial aid for which the student would otherwise qualify. The Washington college bound scholarship is intended to replace unmet need, loans, and, at the student's option, work-study award before any other grants or scholarships are reduced.~~

~~((9)) (8) The first scholarships shall be awarded to students graduating in 2012.~~

~~(9) Beginning with eligible students enrolling in a postsecondary education institution for the first time during the 2021-22 academic year, those eligible students who are divested of a college bound scholarship because they are unable to meet the requirement in subsection (3) (d) of this section, but whose family income is less than 100 percent of the state median family income, are entitled to a stipend of \$500 for books, materials, and other scholastic expenses annually, renewable for no more than four full-time years.~~

(10) The eligible student has a property right in the award, but the state of Washington retains legal ownership of tuition units awarded as scholarships under this chapter until the tuition units are redeemed. These tuition units shall remain separately held from any tuition units owned under chapter 28B.95 RCW by a Washington college bound scholarship recipient.

(11) The scholarship award must be used within five years of receipt. Any unused scholarship tuition units revert to the Washington college bound scholarship account.

(12) Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the scholarship tuition units shall revert to the Washington college bound scholarship account.

Sec. 3. RCW 28B.118.040 and 2019 c 298 s 2 are each amended to read as follows:

The office of student financial assistance shall:

(1) With the assistance of the office of the superintendent of public instruction, implement and administer the Washington college bound scholarship program;

(2) Develop ~~((and distribute, to all schools with students enrolled in grades seven through nine, a pledge form that can be completed and returned electronically or by mail by the student or the school to the office of student financial assistance)) effective methods to notify eligible students of their enrollment in the Washington college~~

bound scholarship program and the requirements of RCW 28B.118.010;

(3) Develop and implement a (~~student application, selection, and notification~~) process for (~~scholarships~~) verifying eligibility, which includes working with other state agencies, law enforcement, or the court system to verify that eligible students do not have felony convictions;

(4) Annually in March, with the assistance of the office of the superintendent of public instruction, distribute to (~~tenth~~) 11th grade (~~college bound scholarship~~) eligible students and their families: (a) Notification that, to qualify for the scholarship, a student's family income may not exceed sixty-five percent of the state median family income at graduation from high school; (b) the current year's value for sixty-five percent of the state median family income; and (c) a statement that a student should consult their school counselor if their family makes, or is projected to make, more than this value before the student graduates;

(5) Develop comprehensive social media outreach with grade-level specific information designed to keep students on track to graduate and leverage current tools such as the high school and beyond plan required by the state board of education and the ready set grad website maintained by the student achievement council;

(6) Track scholarship recipients to ensure continued eligibility and determine student compliance for awarding of scholarships;

(7) Within existing resources, collaborate with college access providers and K-12, postsecondary, and youth-serving organizations to map and coordinate mentoring and advising resources across the state;

(8) Subject to appropriation, deposit funds into the state educational trust fund;

(9) Purchase tuition units under the advanced college tuition payment program in chapter 28B.95 RCW to be owned and held in trust by the office of student financial assistance, for the purpose of scholarship awards as provided for in this section; and

(10) Distribute scholarship funds, in the form of tuition units purchased under

the advanced college tuition payment program in chapter 28B.95 RCW or through direct payments from the state educational trust fund, to institutions of higher education on behalf of scholarship recipients identified by the office, as long as recipients maintain satisfactory academic progress.

Sec. 4. RCW 28B.118.090 and 2019 c 406 s 45 and 2019 c 298 s 3 are each reenacted and amended to read as follows:

(1) Beginning January 1, 2015, and at a minimum every year thereafter, the student achievement council and all institutions of higher education eligible to participate in the college bound scholarship program shall ensure data needed to analyze and evaluate the effectiveness of the college bound scholarship program is promptly transmitted to the education data center created in RCW 43.41.400 so that it is available and easily accessible. The data to be reported should include but not be limited to:

(a) The number of enrolled students (~~who sign up~~) for the college bound scholarship program in seventh, eighth, (~~or~~) ninth, or 10th grade;

(b) The number of college bound scholarship students who graduate from high school;

(c) The number of college bound scholarship students who enroll in postsecondary education;

(d) Persistence and completion rates of college bound scholarship recipients disaggregated by institutions of higher education;

(e) College bound scholarship recipient grade point averages;

(f) The number of college bound scholarship recipients who did not remain eligible and reasons for ineligibility;

(g) College bound scholarship program costs; and

(h) Impacts to the Washington college grant program.

(2) Beginning May 12, 2015, and at a minimum every December 1st thereafter, the student achievement council shall submit student unit record data for the college bound scholarship program applicants and recipients to the education data center.

NEW SECTION. **Sec. 5.** This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

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."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representative MacEwen, Assistant Ranking Minority Member.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5331 Prime Sponsor, Committee on Ways & Means: Establishing an early childhood court program for young children and their families involved in Washington's child welfare system. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

SB 5345 Prime Sponsor, Senator Brown: Establishing a statewide industrial waste coordination program. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Environment & Energy.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that industrial symbiosis networks create valuable collaborative opportunities where the underutilized resources of one company, such as waste, by-products, residues, energy, water, logistics, capacity, expertise, equipment, and materials may be used by another. The legislature further finds that many existing businesses and organizations in the state have the potential to partner in the establishment of these networks, and the formation of industrial symbiosis innovation hubs at the state and local level would facilitate a systems approach that identifies business opportunities to improve resource utilization and productivity for a more sustainable and integrated industrial economy.

Therefore, the legislature intends to establish a statewide industrial waste coordination program in order to nurture and coordinate existing industrial symbiosis efforts and to catalyze new industrial symbiosis opportunities. Furthermore, the legislature intends to establish the program in order to: Find ways of turning waste and by-products into valued resource inputs; reduce waste management costs; generate new business opportunities; increase the size and diversity of business networks; identify means of improving environmental performance; achieve environmental justice in goals and policies; incentivize pathways to family-wage, green jobs; expand the regional circular economy; and drive innovation.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.31 RCW to read as follows:

(1) An industrial waste coordination program is established in order to provide expertise, technical assistance, and best practices to support local industrial symbiosis projects.

(2) The industrial waste coordination program must be administered by the department of commerce and administered

regionally, with each region provided with a dedicated facilitator and technical and administrative support.

(3) The industrial waste coordination program must facilitate waste exchange by:

(a) Developing inventories of industrial waste innovation currently in operation;

(b) Generating a material flow data collection system in order to capture and manage data on resource availability and potential synergies;

(c) Establishing guidance and best practices for emerging local industrial resource hubs, which must include a consideration of steps to avoid creating or worsening negative impacts to overburdened communities as identified by tools such as the department of health's environmental health disparities map;

(d) Identifying access to capital in order to fund projects, including federal, state, local, and private funding;

(e) Developing economic, environmental, and health disparities metrics to measure the results of industrial or commercial hubs;

(f) Hosting workshops and connecting regional businesses, governments, utilities, research institutions, and other organizations in order to identify opportunities for resource collaboration;

(g) Assisting entities throughout the entire life cycle of industrial symbiosis projects, from identification of opportunities to full project implementation;

(h) Developing economic cluster initiatives in order to spur growth and innovation; and

(i) Making any additional recommendations to the legislature in order to incentivize and facilitate industrial symbiosis.

(4) The department of commerce may coordinate with other agencies, representatives of business and manufacturing networks, and other entities in order to develop material flow generation data and increase multisectoral outreach.

(5) In generating the material flow data collection system under subsections (3)(b) and (4) of this section, the department of commerce may only use publicly available data or data voluntarily provided by program participants. No entity may be required to disclose material flow data. The department of commerce must keep any proprietary business information confidential and such information is exempt from public disclosure, as provided in RCW 42.56.270.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.31 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a competitive industrial symbiosis grant program is established in order to provide grants for the research, development, and deployment of local waste coordination projects.

(2) Grants may go towards:

(a) Existing industrial symbiosis efforts by public or private sector organizations;

(b) Emerging industrial symbiosis opportunities involving public or private sector organizations, including projects arising from:

(i) The industrial waste coordination program established in section 2 of this act;

(ii) Conceptual work completed by public utilities to redirect their wastes to productive use; or

(iii) Existing inventories or project concepts involving specific biobased wastes converted to renewable natural gas;

(c) Research on product development using a specific waste flow;

(d) Feasibility studies to evaluate potential biobased resources;

(e) Feasibility studies for publicly owned utilities to evaluate business models to transform to multiutility operations or for the evaluation of potential symbiosis connections with other regional businesses; or

(f) Other local waste coordination projects as determined by the department of commerce.

(3) The department of commerce must develop a method and criteria for the allocation of grants, subject to the following:

(a) Project allocation should reflect geographic diversity, with grants being distributed equally in western and eastern parts of the state, urban and rural areas, and small towns and large cities;

(b) Project allocation should consider factors such as time to implementation and scale of economic or environmental benefits;

(c) Grants must require a one-to-one nonstate to state match;

(d) Individual grant awards may not exceed \$500,000; and

(e) Project allocation should avoid creating or worsening environmental health disparities and should make use of tools such as the department of health's environmental health disparities map.

Sec. 4. RCW 42.56.270 and 2020 c 238 s 11 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) 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;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 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;

(5) 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;

(6) 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;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) 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;

(9) 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;

(10)(a) 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 horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) Submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information

records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12) (a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); ~~((and))~~

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business; and

(iii) Financial or proprietary information collected from any person and provided to the department of commerce pursuant to section 2 (3)(b) and (4) of this act;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter ~~((70.95N))~~ 70A.500 RCW to implement chapter ~~((70.95N))~~ 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17) (a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by

the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW (~~(70.95N.190(4))~~) 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter (~~(70.375)~~) 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW (~~(70.375.130)~~) 70A.515.130; and

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor

and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW.

NEW SECTION. **Sec. 5.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Calder; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5353 Prime Sponsor, Committee on Law & Justice: Creating a partnership model that facilitates community engagement with law enforcement. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Public Safety.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that community engagement is a foundational principle of successful community policing practices. When individuals and neighborhood groups are encouraged to partner with law enforcement, a powerful alliance can be built on mutual trust and respect and mitigate polarization between police departments and community groups. A successful community-police partnership leads to the achievement of shared goals of improving safety and quality of life and ensuring that public safety services are tailored to the needs of local communities.

The legislature recognizes current efforts in Washington to mobilize communities to insist on equitable and

accountable practices that will result in community participation in public safety efforts as well as establish cooperative lines of communication between civilians and law enforcement. Laudable community engagement models such as the safe streets campaign in Pierce county, safe Yakima in Yakima county, and the Okanogan county community coalition are recognized to mitigate crime trends by engaging the community and law enforcement in cooperative efforts to improve public safety.

The department of commerce intends to foster community engagement with law enforcement officers through the creation of a community engagement project in 15 communities across the state of Washington with a mix of urban, rural, and suburban areas to facilitate community-law enforcement partnerships and improve police-community relations. The department will implement a project evaluation to measure and examine the impact of local initiatives on community engagement, neighborhood safety, and positive community-police relations.

The funded projects will facilitate the empowerment of communities to engage in crime prevention efforts through neighborhood organizing, law enforcement-community partnerships, youth mobilization, and business engagement.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a project is created in the department to foster community engagement through neighborhood organizing, law enforcement-community partnerships, youth mobilization, and business engagement. The department shall administer the project. The project must include 12 to 15 grant awards in those counties that have demonstrated their commitment to programs that promote community engagement in public safety including the following counties: Spokane, Pierce, King, Okanogan, Yakima, Cowlitz, Clark, Chelan-Douglas, Walla-Walla, Benton-Franklin, Grant, and Snohomish.

(2) The department shall adopt policies and procedures necessary to administer the project including: (a) An application process; (b) disbursement of the grant award to selected applicants;

(c) tracking compliance and proper use of funds; and (d) measuring outcomes.

(3) Eligible applicants must:

(a) Be a public agency or nongovernmental organization, that is not a law enforcement agency;

(b) Have demonstrated experience with community engagement initiatives that impact public safety;

(c) Have community engagement;

(d) Have established or be willing to establish a coordinated effort with committed partners, which must include law enforcement and organizations committed to diversity, equity, and inclusion of community members, including organizations whose leadership specifically reflects the communities most impacted by racism; and

(e) Have established priorities, policies, and measurable goals in compliance with the requirements of the project as provided in subsection (4) of this section.

(4) The grant recipient shall:

(a) Lead and facilitate neighborhood organizing initiatives, including:

(i) Empowering community members with tools, skills, confidence, and connections to identify, eradicate, and prevent illegal activity;

(ii) Making neighborhood improvements to deter future criminal activity; and

(iii) Educating community members regarding how to connect with city, county, and law enforcement resources;

(b) Build substantive law enforcement-community partnerships, including:

(i) Building trust between community members and law enforcement by facilitating purposeful antiracist practices and the development of policies that lead to equal treatment under the law;

(ii) Establishing clear expectations for law enforcement to be competent to practice fair and equitable treatment including facilitating dialogue between law enforcement and community members to increase understanding of the impact of historical racist practices and current conflicts;

(iii) Community members regularly informing law enforcement, through

presentations, workshops, or forums, on community perceptions of law enforcement and public safety issues;

(iv) Educating community members on the role and function of law enforcement in the community;

(v) Clarifying expectations of law enforcement and of the role of the community in crime prevention;

(vi) Educating community members on the best practices for reporting emergency and nonemergency activities;

(vii) Recognizing community members for effective engagement and community leadership; and

(viii) Recognizing law enforcement officials for efforts to engage underrepresented communities, improve community engagement and empowerment, and reform law enforcement practices;

(c) Mobilize youth to partner with neighborhood groups and law enforcement to prevent violence by:

(i) Helping them develop knowledge and skills to serve as leaders in their communities;

(ii) Focusing on prevention of violence and substance abuse; and

(iii) Empowering youth to bring their voice to community issues that impact healthy police-community relations;

(d) Engage businesses to help prevent crimes, such as vandalism and burglaries, through safety training and other prevention initiatives;

(e) Provide training and technical assistance on how to implement community engagement, improving law enforcement and community partnership, youth engagement, and business engagement;

(f) Identify and maintain consistent, experienced, and committed leadership for managing the grant, including an administrator who acts as an available point of contact with the department; and

(g) Collect and report data and information required by the department.

(5) The department shall, in consultation with the Washington state institute for public policy, develop reporting guidelines for the grant recipient in order to measure whether the safe streets pilot project had an impact on crime rates and community engagement with, and perceptions of, law

enforcement. The department shall submit a preliminary report to the legislature with details on the selected grant recipients and the reporting guidelines by January 1, 2022. The department shall submit a final report on the safe streets pilot project, including an analysis of the reported data required under this subsection, by December 1, 2023.

(6) This section expires January 1, 2024."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Boehnke; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier; Jacobsen and Schmick.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5368 Prime Sponsor, Committee on Ways & Means: Encouraging rural economic development. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Local Government.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 35A.14 RCW to read as follows:

(1) A code city as provided in RCW 35A.14.296(2) may collaborate with the county or counties where the code city is located to form an interlocal agreement regarding annexation of unincorporated territory within the urban growth area boundary. The interlocal agreement formation process must include procedures for public participation. The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, and consideration of

and response to public comments. The interlocal agreement may only be executed after notice of availability of the agreement is posted on the website of each legislative body for four weeks and a public hearing by each legislative body, separately or jointly. This method of annexation shall be an alternative method and is additional to all other methods provided for in this chapter.

(2) An interlocal agreement under this section may include use of a sales tax credit for annexed areas should such a credit be reinstated by the legislature.

(3) The agreement or plan under this section must address the following:

(a) A balancing of annexations of commercial, industrial, and residential properties so that any potential loss or gain is considered and distributed fairly as determined by tax revenue;

(b) Development, ownership, and maintenance of infrastructure;

(c) The potential for revenue-sharing agreements.

(4) In addressing the items in subsection (3)(a) through (c) of this section, the parties must also address the balancing of factors and objectives for annexation review in RCW 36.93.170 and 36.93.180.

(5) By December 1, 2021, the association of Washington cities and the Washington state association of counties shall report to the legislature, in compliance with RCW 43.01.036, on how a sales tax credit may be utilized to encourage appropriate annexations and what limits should be associated with such a credit if reinstated.

Sec. 2. RCW 36.70A.330 and 1997 c 429 s 21 are each amended to read as follows:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance

schedule established by the board in its final order. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, county, or city. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection (1) of this section with the board. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section.

(3) If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. ~~((The))~~

(a) The board may refer a finding of noncompliance to the department. The purpose of the referral is for the department to provide technical assistance to facilitate speedy resolution of the finding of noncompliance and to provide training pursuant to section 3 of this act as necessary.

(b) Alternatively, the board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide, if no determination of invalidity has been made, whether one now should be made under RCW 36.70A.302.

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 36.70A RCW to read as follows:

(1) The department shall offer training to assist local governments in understanding findings of noncompliance from the growth management hearings board pursuant to RCW 36.70A.300 and 36.70A.330 and applying prior decisions of the board

to ongoing planning efforts to avoid findings of noncompliance.

(2) The department may award grants to a public agency with appropriate expertise and funded by local governments to provide the training required in subsection (1) of this section.

(3) The training provided in subsection (1) of this section is limited to counties that are largely rural.

Sec. 4. RCW 43.155.070 and 2017 3rd sp.s. c 10 s 9 are each amended to read as follows:

(1) To qualify for financial assistance under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, and except as provided in subsection (12) of this section, a county, city, or town planning under RCW 36.70A.040 may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before executing a contractual agreement for financial assistance with the board.

(3) In considering awarding financial assistance for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board must consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4)(a) The board must develop a process to prioritize applications and funding of loans and grants for public works projects submitted by local governments. The board must consider, at a minimum and in any order, the following factors in prioritizing projects:

(i) Whether the project is critical in nature and would affect the health and safety of many people;

(ii) The extent to which the project leverages other funds;

(iii) The extent to which the project is ready to proceed to construction;

(iv) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(v) Whether the project promotes the sustainable use of resources and environmental quality, as applicable;

(vi) Whether the project consolidates or regionalizes systems;

(vii) Whether the project encourages economic development through mixed-use and mixed income development consistent with chapter 36.70A RCW;

(viii) Whether the system is being well-managed in the present and for long-term sustainability;

(ix) Achieving equitable distribution of funds by geography and population;

(x) The extent to which the project meets the following state policy objectives:

- (A) Efficient use of state resources;
- (B) Preservation and enhancement of health and safety;
- (C) Abatement of pollution and protection of the environment;

(D) Creation of new, family-wage jobs, and avoidance of shifting existing jobs

from one Washington state community to another;

(E) Fostering economic development consistent with chapter 36.70A RCW;

(F) Efficiency in delivery of goods and services and transportation; and

(G) Reduction of the overall cost of public infrastructure;

(xi) Whether the applicant sought or is seeking funding for the project from other sources; and

(xii) Other criteria that the board considers necessary to achieve the purposes of this chapter.

(b) Before September 1, 2018, and each year thereafter, the board must develop and submit a report regarding the construction loans and grants to the office of financial management and appropriate fiscal committees of the senate and house of representatives. The report must include:

(i) The total number of applications and amount of funding requested for public works projects;

(ii) A list and description of projects approved in the preceding fiscal year with project scores against the board's prioritization criteria;

(iii) The total amount of loan and grants disbursements made from the public works assistance account in the preceding fiscal year;

(iv) The total amount of loan repayments in the preceding fiscal year for outstanding loans from the public works assistance account;

(v) The total amount of loan repayments due for outstanding loans for each fiscal year over the following ten-year period; and

(vi) The total amount of funds obligated and timing of when the funds were obligated in the preceding fiscal year.

(c) The maximum amount of funding that the board may provide for any jurisdiction is ten million dollars per biennium.

(5) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of

funding for each public works project for which financial assistance is sought under this chapter.

(6) Before September 1st of each year, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans and grants made under RCW 43.155.065 and 43.155.068.

(7) The board may not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds to the board for the purpose of funding public works projects under this chapter.

(8) To qualify for loans, grants, or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(9) After January 1, 2010, any project designed to address the effects of stormwater or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(10) For projects involving repair, replacement, or improvement of a wastewater treatment plant or other public works facility for which an investment grade efficiency audit is reasonably obtainable, the public works board must require as a contract condition that the project sponsor undertake an investment grade efficiency audit. The project sponsor may finance the costs of the audit as part of its public works assistance account program loan or grant.

(11) The board must implement policies and procedures designed to maximize local government consideration of other funds to finance local infrastructure.

(12) The provisions in subsection (2) of this section do not apply to a county, city, or town applying for grants and loans under this chapter for projects that support broadband services where such grants and loans will assist the county, city, or town with economic development, disaster resiliency and response, adaptation to public health

emergencies such as pandemics, and emergency management.

NEW SECTION. Sec. 5. A new section is added to chapter 43.160 RCW to read as follows:

The board is prohibited from considering whether a county, city, or town is compliant with chapter 36.70A RCW when considering applications for broadband funding.

NEW SECTION. Sec. 6. A new section is added to chapter 80.36 RCW to read as follows:

The commission is prohibited from considering whether a county, city, or town is compliant with chapter 36.70A RCW when considering applications for broadband funding.

NEW SECTION. Sec. 7. A new section is added to chapter 43.330 RCW to read as follows:

The department is prohibited from considering whether a county, city, or town is compliant with chapter 36.70A RCW when considering applications for broadband funding."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Schmick; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5377 Prime Sponsor, Committee on Ways & Means: Increasing affordability of standardized plans on the individual market. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 43.71 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a premium assistance program is hereby established to be administered by the exchange.

(2) Assistance amounts must be established through the omnibus appropriations act.

(3) The exchange must establish, consistent with the omnibus appropriations act:

(a) Procedural requirements for eligibility and continued participation in any premium assistance program or cost-sharing program established under this section, including participant documentation requirements that are necessary to administer the program; and

(b) Procedural requirements for facilitating payments to carriers.

(4) Subject to the availability of amounts appropriated for this specific purpose, an individual is eligible for premium assistance and cost-sharing reductions under this section if the individual:

(a) (i) Is a resident of the state;

(ii) Has income that is up to 500 percent of the federal poverty level, or a lower income threshold determined through appropriation;

(iii) Is enrolled in a silver or gold standard plan offered in the enrollee's county of residence;

(iv) Applies for and accepts all federal advance premium tax credits for which they may be eligible before receiving any state premium assistance;

(v) Applies for and accepts all federal cost-sharing reductions for which they may be eligible before receiving any state cost-sharing reductions; and

(vi) Is ineligible for minimum essential coverage through medicare, a federal or state medical assistance program administered by the authority under chapter 74.09 RCW, or for premium assistance under RCW 43.71A.020; or

(b) Meets alternate eligibility criteria as established in the omnibus appropriations act.

(5) (a) The exchange may disqualify an individual from receiving premium

assistance or cost-sharing reductions under this section if the individual:

(i) No longer meets the eligibility criteria in subsection (4) of this section;

(ii) Fails, without good cause, to comply with any procedural or documentation requirements established by the exchange in accordance with subsection (3) of this section;

(iii) Fails, without good cause, to notify the exchange of a change of address in a timely manner;

(iv) Voluntarily withdraws from the program; or

(v) Performs an act, practice, or omission that constitutes fraud, and, as a result, an issuer rescinds the individual's policy for the qualified health plan.

(b) The exchange must develop a process for an individual to appeal a premium assistance or cost-sharing assistance eligibility determination from the exchange.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Advance premium tax credit" means the premium assistance amount determined in accordance with the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(b) "Income" means the modified adjusted gross income attributed to an individual for purposes of determining his or her eligibility for advance premium tax credits.

(c) "Standard plan" means a standardized health plan under RCW 43.71.095.

NEW SECTION. Sec. 2. A new section is added to chapter 43.71 RCW to read as follows:

(1) The exchange, in close consultation with the authority and the office of the insurance commissioner, must explore all opportunities to apply to the secretary of health and human services under 42 U.S.C. Sec. 18052 for a waiver or other available federal flexibilities to:

(a) Receive federal funds for the implementation of the premium assistance or cost-sharing reduction programs established under section 1 of this act;

(b) Increase access to qualified health plans; and

(c) Implement or expand other exchange programs that increase affordability of or access to health insurance coverage in Washington state.

(2) If, through the process described in subsection (1) of this section an opportunity to submit a waiver is identified, the exchange, in collaboration with the office of the insurance commissioner and the health care authority, may develop an application under this section to be submitted by the health care authority. If an application is submitted, the health care authority must notify the chairs and ranking minority members of the appropriate policy and fiscal committees of the legislature.

(3) Any application submitted under this section must meet all federal public notice and comment requirements under 42 U.S.C. Sec. 18052(a)(4)(B), including public hearings to ensure a meaningful level of public input.

NEW SECTION. Sec. 3. A new section is added to chapter 43.71 RCW to read as follows:

(1) The state health care affordability account is created in the state treasury. Expenditures from the account may only be used for premium and cost-sharing assistance programs established in section 1 of this act.

(2) The following funds must be deposited in the account:

(a) Any grants, donations, or contributions of money collected for purposes of the premium assistance or cost-sharing reduction programs established in section 4 of this act;

(b) Any federal funds received by the health benefit exchange pursuant to section 2 of this act; and

(c) Any additional funding specifically appropriated to the account.

NEW SECTION. Sec. 4. A new section is added to chapter 48.43 RCW to read as follows:

For qualified health plans offered on the exchange, a carrier shall:

(1) Accept payments for enrollee premiums or cost-sharing assistance under section 1 of this act or as part of a sponsorship program under RCW 43.71.030(4). Nothing in this subsection expands or restricts the types of sponsorship programs authorized under state and federal law;

(2) Clearly communicate premium assistance amounts to enrollees as part of the invoicing and payment process; and

(3) Accept and process enrollment and payment data transferred by the exchange in a timely manner.

NEW SECTION. Sec. 5. A new section is added to chapter 41.05 RCW to read as follows:

(1)(a) For plan years 2022 and later, except as provided in (b) of this subsection, a hospital system that owns or operates at least four hospitals licensed under chapter 70.41 RCW must contract with at least two public option plans of the hospital system's choosing in each county in which the hospital system has at least one hospital licensed under chapter 70.41 RCW to provide in-network services to the enrollees of that plan.

(b) A hospital is not required to contract with two public option plans in a county pursuant to (a) of this subsection unless it receives an offer from at least two health carriers to provide in-network services as part of a public option plan in that county for the following plan year. If a hospital receives only one offer from a health carrier to participate in a public option plan in a county, it is only required to contract with one public option plan in that county.

(2) Health carriers and hospitals may not condition negotiations or participation of a hospital licensed under chapter 70.41 RCW in any health plan offered by the health carrier on the hospital's negotiations or participation in a public option plan.

(3) By December 1st of the plan year during which enrollment in public option plans statewide is greater than 10,000 covered lives:

(a) The health benefit exchange, in consultation with the insurance commissioner and the authority, shall

analyze public option plan rates paid to hospitals for in-network services and whether they have impacted hospital financial sustainability. The analysis must include any impact on hospitals' operating margins during the years public option health plans have been offered in the state and the estimated impact on operating margins in future years if enrollment in public option plans increases. The analysis may examine a sample of hospitals of various sizes and located in various counties. In conducting its analysis, the exchange must give substantial weight to any available reporting of health care provider and health system costs under RCW 70.390.050; and

(b) The health care cost transparency board established under chapter 70.390 RCW shall analyze the effect that enrollment in public option plans has had on consumers, including an analysis of the benefits provided to, and premiums and cost-sharing amounts paid by, consumers enrolled in public option plans compared to other standardized and nonstandardized qualified health plans.

(4) The authority may adopt program rules, in consultation with the office of the insurance commissioner, to ensure compliance with this section, including levying fines and taking other contract actions it deems necessary to enforce compliance with this section.

(5) For the purposes of this section, "public option plan" means a qualified health plan contracted by the authority under RCW 41.05.410.

Sec. 6. RCW 41.05.410 and 2019 c 364 s 3 are each amended to read as follows:

(1) The authority, in consultation with the health benefit exchange, must contract with one or more health carriers to offer qualified health plans on the Washington health benefit exchange for plan years beginning in 2021. A health carrier contracting with the authority under this section must offer at least one bronze, one silver, and one gold qualified health plan in a single county or in multiple counties. The goal of the procurement conducted under this section is to have a choice of qualified health plans under this section offered in every county in the state. The authority may not execute a contract with an apparently successful bidder under this section until after the insurance commissioner has given final approval of the health

carrier's rates and forms pertaining to the health plan to be offered under this section and certification of the health plan under RCW 43.71.065.

(2) A qualified health plan offered under this section must meet the following criteria:

(a) The qualified health plan must be a standardized health plan established under RCW 43.71.095;

(b) The qualified health plan must meet all requirements for qualified health plan certification under RCW 43.71.065 including, but not limited to, requirements relating to rate review and network adequacy;

(c) The qualified health plan must incorporate recommendations of the Robert Bree collaborative and the health technology assessment program;

(d) The qualified health plan may use an integrated delivery system or a managed care model that includes care coordination or care management to enrollees as appropriate;

(e) The qualified health plan must meet additional participation requirements to reduce barriers to maintaining and improving health and align to state agency value-based purchasing. These requirements may include, but are not limited to, standards for population health management; high-value, proven care; health equity; primary care; care coordination and chronic disease management; wellness and prevention; prevention of wasteful and harmful care; and patient engagement;

(f) To reduce administrative burden and increase transparency, the qualified health plan's utilization review processes must:

(i) Be focused on care that has high variation, high cost, or low evidence of clinical effectiveness; and

(ii) Meet national accreditation standards;

(g) ~~((+))~~ The total amount the qualified health plan reimburses providers and facilities for all covered benefits in the statewide aggregate, excluding pharmacy benefits, may not exceed one hundred sixty percent of the total amount medicare would have reimbursed providers and facilities for

the same or similar services in the statewide aggregate;

~~((iii) Beginning in calendar year 2023, if the authority determines that selective contracting will result in actuarially sound premium rates that are no greater than the qualified health plan's previous plan year rates adjusted for inflation using the consumer price index, the director may, in consultation with the health benefit exchange, waive (g)(i) of this subsection as a requirement of the contracting process under this section;))~~

(h) For services provided by rural hospitals certified by the centers for medicare and medicaid services as critical access hospitals or sole community hospitals, the rates may not be less than one hundred one percent of allowable costs as defined by the United States centers for medicare and medicaid services for purposes of medicare cost reporting;

(i) Reimbursement for primary care services, as defined by the authority, provided by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine, may not be less than one hundred thirty-five percent of the amount that would have been reimbursed under the medicare program for the same or similar services; and

(j) The qualified health plan must comply with any requirements established by the authority to address amounts expended on pharmacy benefits including, but not limited to, increasing generic utilization and use of evidence-based formularies.

(3) (a) At the request of the authority for monitoring, enforcement, or program and quality improvement activities, a qualified health plan offered under this section must provide cost and quality of care information and data to the authority, and may not enter into an agreement with a provider or third party that would restrict the qualified health plan from providing this information or data.

(b) Pursuant to RCW 42.56.650, any cost or quality information or data submitted to the authority is exempt from public disclosure.

(4) Nothing in this section prohibits a health carrier offering qualified health plans under this section from

offering other health plans in the individual market.

Sec. 7. RCW 43.71.095 and 2019 c 364 s 1 are each amended to read as follows:

(1) The exchange, in consultation with the commissioner, the authority, an independent actuary, and other stakeholders, must establish up to three standardized health plans for each of the bronze, silver, and gold levels.

(a) The standardized health plans must be designed to reduce deductibles, make more services available before the deductible, provide predictable cost sharing, maximize subsidies, limit adverse premium impacts, reduce barriers to maintaining and improving health, and encourage choice based on value, while limiting increases in health plan premium rates.

(b) The exchange may update the standardized health plans annually.

(c) The exchange must provide a notice and public comment period before finalizing each year's standardized health plans.

(d) The exchange must provide written notice of the standardized health plans to licensed health carriers by January 31st before the year in which the health plans are to be offered on the exchange. The exchange may make modifications to the standardized plans after January 31st to comply with changes to state or federal law or regulations.

(2) (a) Beginning January 1, 2021, any health carrier offering a qualified health plan on the exchange must offer ~~((one))~~ the silver ~~((standardized health plan))~~ and ~~((one))~~ gold standardized health plans established under this section on the exchange in each county where the carrier offers a qualified health plan. If a health carrier offers a bronze health plan on the exchange, it must offer ~~((one))~~ the bronze standardized health plans established under this section on the exchange in each county where the carrier offers a qualified health plan.

(b) (i) ~~((A))~~ Until December 31, 2022, a health ~~((plan))~~ carrier offering a standardized health plan under this section may also offer nonstandardized health plans on the exchange. Beginning January 1, 2023, a health carrier offering a standardized health plan under this section may also offer up to two

nonstandardized gold health plans, two nonstandardized bronze health plans, one nonstandardized silver health plan, one nonstandardized platinum health plan, and one nonstandardized catastrophic health plan in each county where the carrier offers a qualified health plan.

(ii) The exchange, in consultation with the office of the insurance commissioner, shall analyze the impact to exchange consumers of offering only standard plans beginning in 2025 and submit a report to the appropriate committees of the legislature by December 1, 2023. The report must include an analysis of how plan choice and affordability will be impacted for exchange consumers across the state, including an analysis of offering a bronze standardized high deductible health plan compatible with a health savings account, and a gold standardized health plan closer in actuarial value to the silver standardized health plan.

(iii) The actuarial value of nonstandardized silver health plans offered on the exchange may not be less than the actuarial value of the standardized silver health plan with the lowest actuarial value.

(c) A health carrier offering a standardized health plan on the exchange under this section must continue to meet all requirements for qualified health plan certification under RCW 43.71.065 including, but not limited to, requirements relating to rate review and network adequacy."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Hoff; Jacobsen; Rude; Schmick and Steele.

MINORITY recommendation: Without recommendation. Signed by Representative Harris.

Referred to Committee on Rules for second reading.

April 1, 2021

2SSB 5383 Prime Sponsor, Committee on Ways & Means: Authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Community & Economic Development.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that the COVID-19 pandemic has made it clear that equitable access to education can only happen with equitable access to reliable broadband. Increasing broadband access to unserved areas of the state is of vital importance to increasing quality of life, broadening educational opportunities, and promoting economic inclusion in the parts of our state that, without broadband access, cannot fully participate in modern society. The legislature further finds that one of the most effective tools to ensure all Washingtonians have an opportunity to equitably access education, the job market, and health care resources is to allow our public utility districts and port districts to provide retail telecommunications services.

Sec. 2. RCW 54.16.330 and 2019 c 365 s 9 are each amended to read as follows:

(1)(a) A public utility district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(i) For the district's internal telecommunications needs; and

(ii) For the provision of wholesale telecommunications services (~~within~~) as follows:

(A) Within the district and by contract with another public utility district;

(B) Within an area in an adjoining county that is already provided electrical services by the district; or

(C) Within an adjoining county that does not have a public utility district providing electrical or telecommunications services headquartered within the county's boundaries, but only if the district providing telecommunications services is not authorized to provide electrical services.

(b) Except as provided in subsections (8) and (10) of this section, nothing in this section shall be construed to authorize public utility districts to provide telecommunications services to end users.

(2) A public utility district providing wholesale or retail telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale or retail telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing wholesale or retail telecommunications services shall not be required to, but may, establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale or retail telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale or retail telecommunications services must be dedicated to costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such telecommunications facilities are discharged or retired.

(4) When a public utility district provides wholesale or retail telecommunications services, all

telecommunications services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale or retail telecommunications services.

(5) If a person or entity receiving retail telecommunications services from a public utility district under this section has a complaint regarding the reasonableness of the rates, terms, conditions, or services provided, the person or entity may file a complaint with the district commission.

(6) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(7) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a public utility district under this title.

(8) (a) If an internet service provider operating on telecommunications facilities of a public utility district that provides wholesale telecommunications services but does not provide retail telecommunications services, ceases to provide access to the internet to its end-use customers, and no other retail service providers are willing to provide service, the public utility district may provide retail telecommunications services to the end-use customers of the defunct internet service provider in order for end-use customers to maintain access to the internet until a replacement internet service provider is, or providers are, in operation.

(b) Within thirty days of an internet service provider ceasing to provide access to the internet, the public utility district must initiate a process to find a replacement internet service provider or providers to resume providing access to the internet using telecommunications facilities of a public utility district.

(c) For a maximum period of five months, following initiation of the process begun in (b) of this section, or, if earlier than five months, until a replacement internet service provider is, or providers are, in operation, the district commission may establish a rate for providing access to the internet and charge customers to cover expenses necessary to provide access to the internet.

(9) The tax treatment of the retail telecommunications services provided by a public utility district to the end-use customers during the period specified in subsection (8) of this section must be the same as if those retail telecommunications services were provided by the defunct internet service provider.

(10) (a) A public utility district may provide retail telecommunications services to end users in unserved areas.

(b) A public utility district must notify and consult with the governor's statewide broadband office within 30 days of its decision to provide retail telecommunications services to unserved areas. The governor's statewide broadband office must post notices received from a public utility district pursuant to this subsection on its public website.

(c) Any public utility district that intends to provide retail telecommunications services to unserved areas must submit a telecommunications infrastructure and service plan to the governor's statewide broadband office that will be published on the office's website. Submission of plans will enable the governor's statewide broadband office: (i) To better understand infrastructure deployment; (ii) to potentially allocate funding for unserved areas; (iii) to advance the state policy objectives; (iv) to determine whether the plan aligns with state policy objectives and broadband priorities; (v) to measure progress toward serving those in unserved areas; (vi) to report on the feasibility and sustainability of the project; and (vii) to confirm that the project is within an unserved area. The telecommunications infrastructure and service plans shall include, but not be limited to, the following:

(A) Map and description of how the deployment of proposed broadband

infrastructure will achieve at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;

(B) Project timeline prioritization of unserved areas; and

(C) Description of potential state and federal funding available to provide service to the unserved area.

(d) A public utility district that exercises its authority under (a) of this subsection to provide retail telecommunications services may use state funds, federal funds appropriated through the state, or federal funds dedicated for projects in unserved areas to fund projects identified in the submitted telecommunications infrastructure and service plan required in (c) of this subsection.

(e) A public utility district providing retail telecommunications services under this subsection must operate an open access network.

(f) This section does not apply to retail internet services provided by a public utility district under RCW 54.16.420.

(g) Provisions in this subsection do not apply to the provision of wholesale telecommunications services authorized in this section.

(h) For the purposes of this subsection:

(i) "Open access network" means a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

(ii) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.

Sec. 3. RCW 53.08.370 and 2019 c 365 s 10 are each amended to read as follows:

(1) A port district in existence on June 8, 2000, may construct, purchase,

acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's own use; and

(b) For the provision of wholesale telecommunications services within or without the district's limits. ~~((Nothing))~~ Except as provided in subsection (10) of this section, nothing in this subsection shall be construed to authorize port districts to provide telecommunications services to end users.

(2) Except as provided in subsection (9) of this section, a port district providing wholesale telecommunications services under this section shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a port district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

(4) When a port district establishes a separate utility function for the provision of wholesale telecommunications services, all

telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A port district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A port district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a port district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a port district under this title.

(7) A port district that has not exercised the authorities provided in this section prior to June 7, 2018, must develop a business case plan before exercising the authorities provided in this section. The port district must procure an independent qualified consultant to review the business case plan, including the use of public funds in the provision of wholesale telecommunications services. Any recommendations or adjustments to the business case plan made during third-party review must be received and either rejected or accepted by the port commission in an open meeting.

(8) A port district with telecommunications facilities for use in the provision of wholesale telecommunications in accordance with subsection (1)(b) of this section may be subject to local leasehold excise taxes under RCW 82.29A.040.

(9)(a) A port district under this section may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.

(b) For the purposes of this section "telecommunications company" means any for-profit entity owned by investors that sells telecommunications services to end users.

(c) Nothing in this subsection (9) is intended to limit or otherwise restrict any other authority provided by law.

(10)(a) A port district may provide retail telecommunications services to end users in unserved areas.

(b) A port district must notify and consult with the governor's statewide broadband office within 30 days of its decision to provide retail telecommunications services to unserved areas. The governor's statewide broadband office must post notices received from a port district pursuant to this subsection on its public website.

(c) Any port district that intends to provide retail telecommunications services to unserved areas must submit a telecommunications infrastructure and service plan to the governor's statewide broadband office that will be published on the office's website. Submission of plans will enable the governor's statewide broadband office: (i) To better understand infrastructure deployment; (ii) to potentially allocate funding for unserved areas; (iii) to advance the state policy objectives; (iv) to determine whether the plan aligns with state policy objectives and broadband priorities; (v) to measure progress toward serving those in unserved areas; (vi) to report on the feasibility and sustainability of the project; and (vii) to confirm that the project is within an unserved area. The telecommunications infrastructure and service plans shall include, but not be limited to, the following:

(A) Map and description of how the deployment of proposed broadband infrastructure will achieve at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;

(B) Project timeline prioritization of unserved areas; and

(C) Description of potential state and federal funding available to provide service to the unserved area.

(d) A port district that exercises its authority under (a) of this subsection to provide retail telecommunications services may use state funds, federal funds appropriated through the state, or federal funds dedicated for projects in

unserved areas to fund projects identified in the submitted telecommunications infrastructure and service plan required in (c) of this subsection.

(e) A port district providing retail telecommunications services under this subsection must operate an open access network.

(f) Provisions in this subsection do not apply to the provision of wholesale telecommunications services authorized in this section.

(g) For the purposes of this subsection:

(i) "Open access network" means a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

(ii) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.

Sec. 4. RCW 43.330.538 and 2019 c 365 s 6 are each amended to read as follows:

(1)(a) Beginning January 1, 2021, and biennially thereafter, the office shall report to the legislative committees with jurisdiction over broadband policy and finance on the office's activities during the previous two years.

~~((2))~~ (b) The report must, at a minimum, contain:

~~((a))~~ (i) An analysis of the current availability and use of broadband, including average broadband speeds, within the state;

~~((b))~~ (ii) Information gathered from schools, libraries, hospitals, and public safety facilities across the state, determining the actual speed and capacity of broadband currently in use and the need, if any, for increases in speed and capacity to meet current or anticipated needs;

~~((c))~~ (iii) An overview of incumbent broadband infrastructure within the state;

~~((d))~~ (iv) A summary of the office's activities in coordinating broadband infrastructure development with the public works board, including a summary of funds awarded under RCW 43.155.160;

~~((e))~~ (v) Suggested policies, incentives, and legislation designed to accelerate the achievement of the goals under RCW 43.330.536; and

~~((f))~~ (vi) Any proposed legislative and policy initiatives.

(2)(a) By December 31, 2022, the office must submit a report to the governor and the appropriate committees of the legislature regarding the provision of retail telecommunications services to unserved areas by public utility districts and port districts as provided in RCW 54.16.330(10) and 53.08.370(10).

(b) The report must, at a minimum, contain:

(i) The number of public utility districts and port districts providing retail telecommunications services in an unserved area authorized in RCW 54.16.330(10) and 53.08.370(10); and

(ii) Any recommendations to improve the provision of retail telecommunications services in unserved areas."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Calder; Chandler; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Hoff and Schmick.

MINORITY recommendation: Without recommendation. Signed by Representatives Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Dye; Harris; Jacobsen; Rude and Springer.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5395 Prime Sponsor, Committee on Ways & Means: Concerning use of state resources during periods where state employees are

required to work from home. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on State Government & Tribal Relations.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that during the COVID-19 pandemic, state employees have incurred personal expenses and utilized their own resources serving the public. The state needs to provide state employees the tools necessary to serve the public while working from home.

NEW SECTION. **Sec. 2.** A new section is added to chapter 41.04 RCW to read as follows:

(1) When state employees are required to work from home or are allowed to work from home, agencies may provide or purchase office supplies, services, and other materials necessary for the employees to effectively perform their work.

(2)(a) Subject to appropriation, a state agency may reimburse a state employee for necessary additional expenditures incurred by the employee within the employee's scope of employment and directly related to services performed for the agency. As used in this section, "necessary expenditures" includes, but is not limited to:

(i) Desks, computer stands, computers, computer supplies, and chairs;

(ii) Upgraded internet service that is necessary for the employees to do their jobs, which may include reimbursement to the employees to support the increased costs of the service;

(iii) Equipment and services that assist employees with disabilities or special needs to conduct their jobs remotely; and

(iv) Other items or services determined by the head of the agency, based on guidance provided by the office of financial management except as provided in subsection (6) of this section, to be necessary for employees to perform their jobs.

(b) Following the process established by the agency, an employee shall submit a request for a reimbursement of any necessary additional expenditure with appropriate supporting documentation. An

agency may provide additional time for submitting requests for reimbursement in a written expense reimbursement policy.

(c) An employee may be reimbursed for expenses incurred after April 1, 2020.

(d) An employee may not request a payment to cover the cost of purchasing equipment if the agency has made, or will make, the same type of equipment available to the employee.

(3) Except as provided under subsection (6) of this section, approval of purchases and reimbursements must be done within the policies and procedures established by the office of financial management.

(4) Use of materials and supplies when approved by the agency is not considered use of state resources for private gain.

(5) For the purpose of this section, "agency" or "state agency" means any branch, department, or unit of the state government, however designated or constituted. It is intended that the provisions of this section be followed uniformly.

(6) The director of the office of financial management shall adopt necessary policies and procedures to implement this section, including the percentage of time necessary for an employee working from home to qualify for coverage, qualifying guidelines for employee reimbursement, and establishment of thresholds for when equipment is required to be returned to the agency when an employee returns full-time to the office or leaves state service. Depreciation of items over time must be considered in developing the policies and procedures. Except for the legislative and judicial branches, all state agencies must use the policies and procedures established by the office of financial management. The legislative and judicial branches are encouraged to use the policies and procedures established by the office of financial management to create uniformity in the application of this section across all of state government.

NEW SECTION. Sec. 3. (1) During the COVID-19 emergency, state employees may use state internet resources outside normal business hours for social gatherings to enable them to maintain communication and gather socially. Such activities may include, but not be limited to, sharing ideas and tips for

working remotely, lunch time gatherings, guest speakers, and open microphone sessions. These activities must be done at no expense to the state and will be considered de minimis activities. Participation in such activities will not result in the payment of overtime or accrual of compensatory time.

(2) This section expires upon the termination of the state of emergency under proclamation 20-05 and any subsequent state of emergency issued pertaining to COVID-19 in accordance with RCW 43.06.210. The governor shall provide written notice of the termination date of the state of emergency under proclamation 20-05 and any subsequent state of emergency issued pertaining to COVID-19 to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the governor.

NEW SECTION. Sec. 4. (1) The office of financial management must establish and chair a remote working environment work group to review the issues related to working in a remote environment and prepare a report with recommendations for law and policy in order to more effectively allow state employees to work remotely.

(2) The work group must be composed of representatives of large, medium, and small-sized agencies, and labor organizations. The work group must include representatives of institutions of higher education.

(3) The work group must review issues including, but not limited to:

(a) Scheduling;

(b) The provision of equipment, supplies, and other services needed to perform the duties of employment;

(c) Ways to cover additional expenses incurred by employees for remote work;

(d) Ergonomic issues;

(e) Other potential areas of liability;

(f) Cybersecurity and privacy; and

(g) Ways to assist and facilitate state employees in their work.

(4) The work group must submit an initial report to the governor and appropriate committees of the

legislature by November 1, 2021, and a final report by June 30, 2022.

(5) This section expires June 30, 2023."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Calder; Chandler; Chopp; Cody; Dolan; Dye; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Rude; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member and Schmick.

Referred to Committee on Rules for second reading.

April 1, 2021

E2SSB 5399 Prime Sponsor, Committee on Ways & Means: Concerning the creation of a universal health care commission. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass as amended by Committee on Appropriations and without amendment by Committee on Health Care & Wellness.

Strike everything after the enacting clause and insert the following:

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

(a) Healthy Washingtonians contribute to the economic well-being of their families and communities, and access to appropriate health services and improved health outcomes allow all Washingtonian families to enjoy productive and satisfying lives;

(b) Washington and the United States are experiencing the deepest economic crisis since the Great Depression, caused by a public health crisis;

(c) Skyrocketing unemployment rates due to COVID-19 have exposed the frailties and inequalities of the current health care system while causing unsustainable strain to the state's medicaid system;

(d) Thousands of union and nonunion workers are unemployed and without health insurance;

(e) Approximately 125,000 undocumented people live in the state with no access to health care during a global pandemic;

(f) Multiple economic analyses show that a universal system is less expensive, more equitable, and will produce billions in savings per year; and

(g) While a unified health care financing system can provide universal coverage, increase access to care, decrease costs, and improve quality, implementing such a system in the state is dependent on foundational legal, financial, and programmatic changes from the federal government.

(2) The legislature intends to create a permanent universal health care commission to:

(a) Implement immediate and impactful changes in the state's current health care system to increase access to quality, affordable health care by streamlining access to coverage, reducing fragmentation of health care financing across multiple public and private health insurance entities, reducing unnecessary administrative costs, reducing health disparities, and establishing mechanisms to expeditiously link residents with their chosen providers; and

(b) Establish the preliminary infrastructure to create a universal health system, including a unified financing system, that controls health care spending so that the system is affordable to the state, employers, and individuals, once the necessary federal authorities have been realized.

(3) The legislature further intends that the state, in collaboration with all communities, health plans, and providers, should take steps to improve health outcomes for all residents of the state.

NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW to read as follows:

(1) The universal health care commission is established to create immediate and impactful changes in the health care access and delivery system in Washington and to prepare the state for the creation of a health care system that provides coverage and access for all Washington residents through a unified financing system once the necessary federal authority has become available.

The authority must begin any necessary federal application process within 60 days of its availability.

(2) The commission includes the following voting members:

(a) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(b) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

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

(d) The director of the health care authority, or the director's designee;

(e) The chief executive officer of the Washington health benefit exchange, or the chief executive officer's designee;

(f) The insurance commissioner, or the commissioner's designee;

(g) The director of the office of equity, or the director's designee; and

(h) Six members appointed by the governor, using an equity lens, with knowledge and experience regarding health care coverage, access, and financing, or other relevant expertise, including at least one consumer representative and at least one invitation to an individual representing tribal governments with knowledge of the Indian health care delivery in the state.

(3)(a) The governor must appoint the chair of the commission from any of the members identified in subsection (2) of this section for a term of no more than three years. A majority of the voting members of the commission shall constitute a quorum for any votes of the commission.

(b) The commission's meetings shall be open to the public pursuant to chapter 42.30 RCW. The authority must publish on its website the dates and locations of commission meetings, agendas of prior and upcoming commission meetings, and meeting materials for prior and upcoming commission meetings.

(4) The health care authority shall staff the commission.

(5) Members of the commission shall serve without compensation but must be reimbursed for their travel expenses

while on official business in accordance with RCW 43.03.050 and 43.03.060.

(6) The commission may establish advisory committees that include members of the public with knowledge and experience in health care, in order to support stakeholder engagement and an analytical process by which key design options are developed. A member of an advisory committee need not be a member of the commission.

(7) By November 1, 2022, the commission shall submit a baseline report to the legislature and the governor, and post it on the authority's website. The report must include:

(a) A complete synthesis of analyses done on Washington's existing health care finance and delivery system, including cost, quality, workforce, and provider consolidation trends and how they impact the state's ability to provide all Washingtonians with timely access to high quality, affordable health care;

(b) A strategy for developing implementable changes to the state's health care financing and delivery system to increase access to health care services and health coverage, reduce health care costs, reduce health disparities, improve quality, and prepare for the transition to a unified health care financing system by actively examining data and reports from sources that are monitoring the health care system. Such sources shall include data or reports from the health care cost transparency board under RCW 70.390.070, the public health advisory board, the governor's interagency coordinating council on health disparities under RCW 43.20.275, the all-payer health care claims database established under chapter 43.371 RCW, prescription drug price data, performance measure data under chapter 70.320 RCW, and other health care cost containment programs;

(c) An inventory of the key design elements of a universal health care system including:

(i) A unified financing system including, but not limited to, a single-payer financing system;

(ii) Eligibility and enrollment processes and requirements;

(iii) Covered benefits and services;

(iv) Provider participation;

(v) Effective and efficient provider payments, including consideration of global budgets and health plan payments;

(vi) Cost containment and savings strategies that are designed to assure that total health care expenditures do not exceed the health care cost growth benchmark established under chapter 70.390 RCW;

(vii) Quality improvement strategies;

(viii) Participant cost sharing, if appropriate;

(ix) Quality monitoring and disparities reduction;

(x) Initiatives for improving culturally appropriate health services within public and private health-related agencies;

(xi) Strategies to reduce health disparities including, but not limited to, mitigating structural racism and other determinants of health as set forth by the office of equity;

(xii) Information technology systems and financial management systems;

(xiii) Data sharing and transparency; and

(xiv) Governance and administration structure, including integration of federal funding sources;

(d) An assessment of the state's current level of preparedness to meet the elements of (c) of this subsection and steps Washington should take to prepare for a just transition to a unified health care financing system, including a single-payer financing system. Recommendations must include, but are not limited to, administrative changes, reorganization of state programs, retraining programs for displaced workers, federal waivers, and statutory and constitutional changes;

(e) Recommendations for implementing reimbursement rates for health care providers serving medical assistance clients who are enrolled in programs under chapter 74.09 RCW at a rate that is no less than 80 percent of the rate paid by medicare for similar services;

(f) Recommendations for coverage expansions to be implemented prior to and consistent with a universal health care system, including potential funding sources; and

(g) Recommendations for the creation of a finance committee to develop a financially feasible model to implement universal health care coverage using state and federal funds.

(8) Following the submission of the baseline report on November 1, 2022, the commission must structure its work to continue to further identify opportunities to implement reforms consistent with subsection (7)(b) of this section and to implement structural changes to prepare the state for a transition to a unified health care financing system. The commission must submit annual reports to the governor and the legislature each November 1st, beginning in 2023. The reports must detail the work of the commission, the opportunities identified to advance the goals under subsection (7) of this section, which, if any, of the opportunities a state agency is implementing, which, if any, opportunities should be pursued with legislative policy or fiscal authority, and which opportunities have been identified as beneficial, but lack federal authority to implement.

(9) Subject to sufficient existing agency authority, state agencies may implement specific elements of any report issued under this section. This section shall not be construed to authorize the commission to implement a universal health care system through a unified financing system until there is further action by the legislature and the governor.

(10) The commission must hold its first meeting within 90 days of the effective date of this section."

Correct the title.

Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Do not pass. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

March 31, 2021

SSB 5401 Prime Sponsor, Committee on Higher Education & Workforce Development: Authorizing community and technical colleges to offer bachelor degrees in computer science. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Harris; Hoff; Jacobsen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Steele; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Dye; Rude and Schmick.

Referred to Committee on Rules for second reading.

April 1, 2021

ESSB 5405 Prime Sponsor, Committee on Ways & Means: Instructing the joint legislative audit and review committee to perform racial equity analyses. Reported by Committee on Appropriations

MAJORITY recommendation: Do pass. Signed by Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp; Cody; Dolan; Fitzgibbon; Frame; Hansen; Johnson, J.; Lekanoff; Pollet; Ryu; Senn; Springer; Stonier; Sullivan and Tharinger.

MINORITY recommendation: Without recommendation. Signed by Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke; Caldier; Chandler; Dye; Harris; Hoff; Jacobsen; Rude; Schmick and Steele.

Referred to Committee on Rules for second reading.

April 2, 2021

SSB 5406 Prime Sponsor, Committee on Transportation: Providing compensation for tow truck operators for keeping the public roadways clear. Reported by Committee on Transportation

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.44.110 and 2009 c 393 s 1 are each amended to read as follows:

(1) Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is liable for all damages that the public highway, bridge, elevated structure, or other state property may sustain, as well as payment for vehicle recovery, impound, and storage charges to any registered tow truck operator dispatched by law enforcement or other agency, as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law.

(2) This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, elevated structure, or other state property sustained, as well as payment for vehicle recovery, impound, and storage charges to any registered tow truck operator dispatched by law enforcement or other agency, as the result of any negligent operation thereof. When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally liable for any such damage.

(3) (a) Such damage to any state highway, structure, or other state property may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation or other affected state agency. Any measure of damage determined by the department of transportation to its highway, bridge, elevated structure, or other property under this section is prima facie the amount of damage caused thereby and is presumed to be the amount recoverable in any civil action therefor. The damages available under this section

include the incident response costs, including traffic control, incurred by the department of transportation.

(b) Costs attributable to vehicle recovery, impound, and storage charges for any registered tow truck operator dispatched by law enforcement or other state or local agency may be recovered in a civil action instituted by the registered tow truck operator. The amount of nonpayment for vehicle recovery, impound, and storage charges to any registered tow truck operator dispatched by law enforcement or other agency, under this section is presumed to be the amount recoverable in any civil action therefor and must not exceed the amounts established under the fee schedule adopted pursuant to RCW 46.55.118."

Correct the title.

Signed by Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry; Chapman; Dent; Duerr; Entenman; Goehner; Griffey; Hackney; Klicker; Lovick; McCaslin; Orcutt; Paul; Riccelli; Slatter; Sutherland; Taylor; Valdez; Walsh and Wicks.

MINORITY recommendation: Do not pass. Signed by Representatives Ramos, 2nd Vice Chair and Ramel.

Referred to Committee on Rules for second reading.

March 31, 2021

ESSB 5439 Prime Sponsor, Committee on Transportation: Facilitating the coordinated installation of broadband along state highways. Reported by Committee on Transportation

MAJORITY recommendation: Do pass as amended.

Strike everything after the enacting clause and insert the following:

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

(a) Increasing broadband access to unserved areas of the state provides an increasingly essential public benefit to the citizens of Washington by allowing full participation in society and the modern economy, and enabling access to health care, education, the use of other technologies, and essential services, including public safety;

(b) Facilitating and accelerating affordable and quality statewide broadband access for all Washingtonians will require sustained investment, research, local and community participation, and the formation of strategic partnerships between private, public, and nonprofit entities;

(c) Providing for additional coordination and removal of barriers across sectors to increase broadband access in unserved areas is in the best interest of the state;

(d) Maximizing the use of rights-of-way during construction or repair of transportation systems offers cost-effective opportunities for extending and improving broadband and high-speed internet connections throughout the state; and

(e) Expanding broadband access, especially broadband conduit along roadways, provides commensurate benefits to the transportation system and motor vehicle users in terms of reducing the use of roads and alleviating congestion by allowing for more telework, and laying the foundation for a transportation system increasingly more reliant on autonomous vehicles.

(2) The legislature also finds that there is a need to utilize near-term options and opportunities along state highway rights-of-way to drive broadband network expansion and for undertaking longer-term planning of activities to develop additional paths to facilitate the expansion of broadband networks along state highway rights-of-way.

(3) Therefore, the legislature intends to expedite the expansion of broadband access to unserved areas throughout the state by increasing broadband infrastructure coordination, including through collaboration between the statewide broadband office and the department of transportation; proactively facilitating installation and improvement of infrastructure during state road construction projects; and studying recommendations related to the department of transportation's role in broadband service expansion efforts.

Sec. 2. RCW 43.330.532 and 2019 c 365 s 3 are each amended to read as follows:

(1) The governor's statewide broadband office is established. The director of the office must be appointed by the governor. The office may employ staff

necessary to carry out the office's duties as prescribed by chapter 365, Laws of 2019, subject to the availability of amounts appropriated for this specific purpose.

(2) The purpose of the office is to encourage, foster, develop, and improve affordable, quality broadband within the state in order to:

(a) Drive job creation, promote innovation, improve economic vitality, and expand markets for Washington businesses;

(b) Serve the ongoing and growing needs of Washington's education systems, health care systems, public safety systems, transportation systems, industries and business, governmental operations, and citizens; and

(c) Improve broadband accessibility for unserved communities and populations.

Sec. 3. RCW 43.330.534 and 2019 c 365 s 4 are each amended to read as follows:

(1) The office has the power and duty to:

(a) Serve as the central broadband planning body for the state of Washington;

(b) Coordinate with local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans promoting deployment of broadband infrastructure and greater broadband access, while protecting proprietary information;

(c) Review existing broadband initiatives, policies, and public and private investments;

(d) Develop, recommend, and implement a statewide plan to encourage cost-effective broadband access and to make recommendations for increased usage, particularly in rural and other unserved areas;

(e) Update the state's broadband goals and definitions for broadband service in unserved areas as technology advances, except that the state's definition for broadband service may not be actual speeds less than twenty-five megabits per second download and three megabits per second upload; and

(f) Encourage public-private partnerships to increase deployment and

adoption of broadband services and applications.

(2) When developing plans or strategies for broadband deployment, the office must consider:

(a) Partnerships between communities, tribes, nonprofit organizations, local governments, consumer-owned and investor-owned utilities, and public and private entities;

(b) Funding opportunities that provide for the coordination of public, private, state, and federal funds for the purposes of making broadband infrastructure or broadband services available to rural and unserved areas of the state;

(c) Barriers to the deployment, adoption, and utilization of broadband service, including affordability of service and project coordination logistics; and

(d) Requiring minimum broadband service of twenty-five megabits per second download and three megabits per second upload speed, that is scalable to faster service.

(3) The office may assist applicants for the grant and loan program created in RCW 43.155.160 with seeking federal funding or matching grants and other grant opportunities for deploying broadband services.

(4) The office may take all appropriate steps to seek and apply for federal funds for which the office is eligible, and other grants, and accept donations, and must deposit these funds in the statewide broadband account created in RCW 43.155.165.

(5) In carrying out its purpose, the office may collaborate with the utilities and transportation commission, the office of the chief information officer, the department of commerce, the community economic revitalization board, the department of transportation, the public works board, the state librarian, and all other relevant state agencies.

Sec. 4. RCW 43.330.538 and 2019 c 365 s 6 are each amended to read as follows:

(1) Beginning January 1, 2021, and biennially thereafter, the office shall report to the legislative committees with jurisdiction over broadband policy and finance on the office's activities during the previous two years.

(2) The report must, at a minimum, contain:

(a) An analysis of the current availability and use of broadband, including average broadband speeds, within the state;

(b) Information gathered from schools, libraries, hospitals, and public safety facilities across the state, determining the actual speed and capacity of broadband currently in use and the need, if any, for increases in speed and capacity to meet current or anticipated needs;

(c) An overview of incumbent broadband infrastructure within the state;

(d) A summary of the office's activities in coordinating broadband infrastructure development with the department of transportation and the public works board, including a summary of funds awarded under RCW 43.155.160;

(e) Suggested policies, incentives, and legislation designed to accelerate the achievement of the goals under RCW 43.330.536; and

(f) Any proposed legislative and policy initiatives.

NEW SECTION. Sec. 5. A new section is added to chapter 47.44 RCW to read as follows:

(1) The department is directed to adopt and maintain an agency policy that requires the department to proactively provide broadband facility owners with information about planned state highway projects to enable collaboration between broadband facility owners and the department to identify opportunities for the installation of broadband facilities during the appropriate phase of these projects when such opportunities exist.

(2) If no owners are ready or able to participate in coordination of the installation of broadband infrastructure concurrently with state highway projects, the department may enlist its contractors to install broadband conduit as part of road construction projects in order to directly benefit the transportation system and motor vehicle users by:

(a) Reducing future traffic impacts to the traveling public on the roadway;

(b) Supporting the vehicle miles traveled reduction and congestion

management goals of the state by allowing for more telework; or

(c) Proactively preparing the transportation system for the widespread development and use of autonomous vehicles.

(3) Broadband facility owners must first obtain a franchise granted by the department pursuant to RCW 47.44.010 and 47.44.020 before installing broadband facilities within the department's conduit. The costs for installation and maintenance of such broadband facilities shall be the responsibility of the broadband facility owner. The department may adopt rules establishing a fee schedule for occupancy of broadband facilities within the department's conduit consistent with federal law.

(4) As used in this section:

(a) "Broadband conduit" means a conduit used to support broadband infrastructure, including fiber optic cables.

(b) "Broadband infrastructure" has the same meaning as in RCW 43.330.530.

Sec. 6. RCW 47.52.001 and 2004 c 131 s 1 are each amended to read as follows:

(1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) (~~(Personal wireless service)~~) Broadband, which includes a range of high-speed transmission technologies, including fiber optic lines and personal wireless service facilities, is a critical part of the state's infrastructure. The rapid deployment of (~~(personal wireless service)~~) broadband facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities, and to (~~assure~~) ensure that the use of rights-of-way of limited access facilities accommodate the deployment of (~~(personal wireless service)~~) broadband facilities

consistent with these interests. In furtherance of this policy, the department is directed to adopt and maintain an agency policy that requires the department to proactively provide broadband facility owners with information about planned limited access highway projects to enable collaboration between broadband facility owners and the department to identify opportunities for the installation of broadband facilities during the appropriate phase of these projects when such opportunities exist. Coordination between the department and broadband facility owners under this section must comply with applicable state and federal law including, but not limited to, chapter 47.44 RCW and RCW 47.04.045.

NEW SECTION. Sec. 7. (1) Subject to the availability of amounts appropriated for this specific purpose in the omnibus transportation appropriations act, the joint transportation committee shall oversee a consultant study to recommend:

(a) An effective department of transportation strategy, and specific highway corridors, that could be used to address missing fiber connections and inadequate broadband service in parts of the state unserved and underserved by broadband facilities while also aiding the achievement of the state broadband goals specified in RCW 43.330.536. As part of this recommendation, the following areas must also be addressed:

(i) What the appropriate taxonomy to apply to areas unserved or underserved by broadband is to better prioritize and contextualize the urgency of the need for broadband infrastructure in a given area; and

(ii) When the inclusion of broadband conduit installation in a transportation project is recommended as the most effective means of facilitating broadband access, rather than an alternative broadband facility placement, taking into account potential costs, and subject to any limitations in understanding potential costs of installation as part of a transportation project not yet undertaken;

(b) The role of the Washington state department of transportation and the statewide broadband office in a coordinated approach for broadband development statewide on highway rights-of-way that includes the adaptation of existing programs and activities to

further a state initiative to expand and improve access to broadband;

(c) The most promising planning and financing tools that could be used by the department of transportation to provide the state with greater ability to install conduit in anticipation of future broadband fiber occupancy by others;

(d) Opportunities for mutually beneficial partnerships between the department of transportation and broadband service providers that could provide broadband services for transportation purposes such as intelligent transportation systems, cooperative automated transportation/autonomous vehicles, transportation demand management, and highway maintenance activities; and

(e) Strategies for the mitigation of potential safety, operations, and preservation impacts to transportation related to the recommendations made in (a) through (d) of this subsection.

(2) The study must consider the most relevant best practices in other states and their potential application in Washington.

(3) The study must also include an examination of any state and federal laws and regulations that could prevent or limit the implementation of these recommendations, as well as recommendations for modifications to the applicable state laws and regulations and recommended federal actions that could be requested by Washington state legislators.

(4) The joint transportation committee shall consult with the department of transportation, the Washington statewide broadband office, other state agencies and local jurisdictions, public and private utility providers, and public and private broadband providers, as necessary, during development of the study's recommendations to ensure the relevance and applicability of the recommendations to the state.

(5) The joint transportation committee shall issue a report of its findings and recommendations to the house of representatives and senate transportation committees by January 1, 2022.

Sec. 8. RCW 47.44.010 and 2001 c 201 s 5 are each amended to read as follows:

(1) The department of transportation may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any state highway for the construction and maintenance of water pipes, flume, gas, oil or coal pipes, telephone, telegraph (~~and~~), fiber optic, electric light and power lines and conduits, trams or railways, and any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities. In order to minimize the disruption to traffic and damage to the roadway, the department is encouraged to develop a joint trenching policy with other affected jurisdictions so that all permittees and franchisees requiring access to ground under the roadway may do so at one time.

(2) All applications for the franchise must be made in writing and subscribed by the applicant, and describe the state highway or portion thereof over which franchise is desired and the nature of the franchise. The application must also include the identification of all jurisdictions affected by the franchise and the names of other possible franchisees who should receive notice of the application for a franchise.

(3) The department of transportation shall adopt rules providing for a hearing or an opportunity for a hearing with reasonable public notice thereof with respect to any franchise application involving the construction and maintenance of utilities or other facilities within the highway right-of-way which the department determines may (a) during construction, significantly disrupt the flow of traffic or use of driveways or other facilities within the right-of-way, or (b) during or following construction, cause a significant and adverse effect upon the surrounding environment."

Correct the title.

Signed by Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry; Chapman; Dent; Duerr; Entenman; Goehner; Griffey; Hackney; Klicker;

Lovick; Orcutt; Paul; Ramel; Riccelli; Slatter; Sutherland; Taylor; Valdez; Walsh and Wicks.

MINORITY recommendation: Without recommendation. Signed by Representative McCaslin.

Referred to Committee on Rules for second reading.

There being no objection, the bills listed on the day's supplemental committee reports under the fifth order of business were referred to the committees so designated.

There being no objection, the House adjourned until 10:00 a.m., April 3, 2021, the 83rd Legislative Day of the Regular Session.

LAURIE JINKINS, Speaker

BERNARD DEAN, Chief Clerk

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