

**FIFTY SECOND DAY**

**MORNING SESSION**

BARBARA BAKER, Chief Clerk

Senate Chamber, Olympia, Wednesday, March 3, 2010

MESSAGE FROM THE HOUSE

March 2, 2010

The Senate was called to order at 9:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Brown, Fairley, Gordon, Hargrove, Haugen, Holmquist, Kline, McAuliffe, McCaslin and Oemig.

The Sergeant at Arms Color Guard consisting of Pages Zach Campbell and Jasmin Kariious, presented the Colors. Senator Morton offered the prayer.

**MOTION**

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

**MOTION**

On motion of Senator Eide, the Senate advanced to the third order of business.

**MESSAGE FROM THE GOVERNOR  
GUBERNATORIAL APPOINTMENTS**

February 15, 2010

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

I have the honor to submit the following reappointment, subject to your confirmation.

HARRY BARBER, reappointed February 15, 2010, for the term ending July 15, 2013, as Member of the Salmon Recovery Funding Board.

Sincerely,

CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Natural Resources, Ocean & Recreation.

**MOTION**

On motion of Senator Eide, the appointee listed on the Gubernatorial Appointment report was referred to the committee as designated.

**MOTION**

On motion of Senator Eide, the Senate advanced to the fourth order of business.

**MESSAGE FROM THE HOUSE**

March 2, 2010

MR. PRESIDENT:

The House has passed:

ENGROSSED SUBSTITUTE SENATE BILL 6241,  
SUBSTITUTE SENATE BILL 6357,  
ENGROSSED SUBSTITUTE SENATE BILL 6499,  
ENGROSSED SUBSTITUTE SENATE BILL 6522,  
and the same are herewith transmitted.

MR. PRESIDENT:

The House has passed:

SUBSTITUTE SENATE BILL 6414,  
SUBSTITUTE SENATE BILL 6556,  
SENATE BILL 6627,  
SENATE BILL 6745,  
SUBSTITUTE SENATE BILL 6831,  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

**MOTION**

On motion of Senator Eide, the Senate advanced to the sixth order of business.

**SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS**

**MOTION**

Senator McDermott moved that Gubernatorial Appointment No. 9262, Gayatri J. Eassey, as a member of the Board of Trustees, Seattle, South Seattle and North Seattle Community Colleges District No. 6, be confirmed.

Senator McDermott spoke in favor of the motion.

**MOTION**

On motion of Senator Brandland, Senators Holmquist, McCaslin and Zarelli were excused.

**MOTION**

On motion of Senator Marr, Senators Brown, Fairley, Gordon, Haugen, McAuliffe and Oemig were excused.

**APPOINTMENT OF GAYATRI J. EASSEY**

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9262, Gayatri J. Eassey as a member of the Board of Trustees, Seattle, South Seattle and North Seattle Community Colleges District No. 6.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9262, Gayatri J. Eassey as a member of the Board of Trustees, Seattle, South Seattle and North Seattle Community Colleges District No. 6 and the appointment was confirmed by the following vote: Yeas, 39; Nays, 0; Absent, 2; Excused, 8.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Franklin, Fraser, Hatfield, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senators Hargrove and Kline

Excused: Senators Brown, Fairley, Gordon, Haugen, Holmquist, McAuliffe, McCaslin and Oemig

Gubernatorial Appointment No. 9262, Gayatri J. Eassey, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Seattle, South Seattle and North Seattle Community Colleges District No. 6.

#### INTRODUCTION OF SPECIAL GUESTS

The President introduced Miss Kaleigh Boyd, the 2010 YMCA Youth Legislature's Lt. Governor, who was seated at the rostrum and shadowing the President for the day.

#### SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

##### MOTION

Senator Marr moved that Gubernatorial Appointment No. 9167, Tom A. Johnson, as a member of the Higher Education Facilities Authority, be confirmed.

Senator Marr spoke in favor of the motion.

#### APPOINTMENT OF TOM A. JOHNSON

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9167, Tom A. Johnson as a member of the Higher Education Facilities Authority.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9167, Tom A. Johnson as a member of the Higher Education Facilities Authority and the appointment was confirmed by the following vote: Yeas, 40; Nays, 0; Absent, 2; Excused, 7.

Voting yeas: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senators Hargrove and Kline

Excused: Senators Brown, Fairley, Gordon, Holmquist, McAuliffe, McCaslin and Oemig

Gubernatorial Appointment No. 9167, Tom A. Johnson, having received the constitutional majority was declared confirmed as a member of the Higher Education Facilities Authority.

##### MOTION

At 9:17 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:14 a.m. by President Owen.

##### MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

##### MOTION

Senator Honeyford moved adoption of the following resolution:

#### SENATE RESOLUTION 8668

By Senators Honeyford and Prentice

WHEREAS, The earliest documented proof of Filipino presence in the continental United States was on October 18, 1587, when the first "Luzones Indios" set foot in Morro Bay, California; and

WHEREAS, The Filipino American National Historical Society recognizes the year of 1763 as the date of the first permanent Filipino settlement in the United States in St. Malo Parrish, Louisiana, which brings new perspective to the economic, cultural, social, and other notable contributions that Filipino Americans have made toward the development of the United States; and

WHEREAS, The Filipino American National Historical Society recognizes that in the year 1888, records indicate that the first known employee from the Philippines in the Pacific Northwest, "Manilla," worked at the largest lumber mill in the world of that time at Port Blakely on Bainbridge Island; and

WHEREAS, Efforts must continue to promote the study of Filipino American history and culture, as mandated in the mission statement of the Filipino American National Historical Society, because the roles of Filipino Americans have been overlooked in the writing, teaching, and learning of United States history; and

WHEREAS, It is imperative for Filipino American youth to have positive role models to instill in them the importance of education, complemented with the richness of their ethnicity and the value of their legacy; and

WHEREAS, Washington State is home to many Filipino American families, the largest Asian/Pacific Islander ethnic population found in the state, and has the fourth largest population of Filipino Americans in the United States, and is the home to historic Filipino communities such as Wapato, Bainbridge Island, Seattle, Tacoma, Auburn, and Bremerton, among others; and

WHEREAS, The 13th Biennial National Conference of the Filipino American National Historical Society returns, in July 2010, to Seattle, the site of the first National Conference;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate recognize October 2010, with special distinction of their honorable service in the United States military branches, as the 423rd anniversary of the presence of Filipinos in the United States, as a significant time to study the advancement of Filipino Americans in the history of the State of Washington and the United States; and that the Washington State Senate designate October 2010 as the inaugural Filipino American History Month; and

BE IT FURTHER RESOLVED, That a copy of this resolution be immediately transmitted by the Secretary of the Senate to Rey Pascua, President of the Filipino American Community of Yakima Valley, for further distribution to the Filipino American National Historical Society and Asian and Pacific Islander organizations and the Superintendent of Public Instruction.

Senators Honeyford, Prentice, Kline, Regala, Shin, Kauffman, Kohl-Welles, King, Roach, Rockefeller and Jacobsen spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8668.

The motion by Senator Honeyford carried and the resolution was adopted by voice vote.

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The President welcomed and introduced members of the Filipino American community; Rey Pacua, President, Sandra Pascua and members of the Yakima Valley Filipino American National Historical Society; Dr. Frederic and Dorothy Cordova, National Filipino American Historical Society; Velma Valoria, former Washington State Representative; Alma Kern, President, and other members of the Filipino American Community of Seattle and other areas around the state; Kendee Yamaguchi, Executive Director and members of the Commission on Asian Pacific/American Affairs; Jose Calugas Jr, son of Medal of Honor winner Jose Calugas Sr., and Chair of the Philippine Scout Heritage Society, Tacoma Center; Alex Borromeo, President and other officers of the Pacific Northwest Filipino American Chamber of Commerce; Richard Gurtiza, President and member of the Filipino American Political Action Group of Washington; Diane Narasaki, Chair and Chapter members of the American Pacific Islander Coalition and Dr. Pio DeCano (who's father's court case in 1938 won the right for Filipinos to lease land in Washington State) who were seated in the gallery.

MOTION

Pursuant to Rule 46, on motion of Senator Eide, and without objection the Committee on Ways & Means was granted leave to meet during the day's floor session.

MOTION

At 11:40 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 2:36 p.m. by President Owen.

MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Hargrove moved that Gubernatorial Appointment No. 9264, Susan Dreyfus, as Director of the Department of Social and Health Services, be confirmed.

Senators Hargrove and King spoke in favor of passage of the motion.

MOTION

On motion of Senator Brandland, Senators Holmquist, McCaslin and Zarelli were excused.

MOTION

On motion of Senator Marr, Senators Brown, Fairley, Gordon, Haugen, McAuliffe and Oemig were excused.

APPOINTMENT OF SUSAN DREYFUS

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9264, Susan Dreyfus as Director of the Department of Social and Health Services.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9264, Susan Dreyfus as Director of the Department of Social and Health Services and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Absent: Senator Kline

Excused: Senators Brown, Holmquist and McCaslin  
Gubernatorial Appointment No. 9264, Susan Dreyfus, having received the constitutional majority was declared confirmed as Director of the Department of Social and Health Services.

INTRODUCTION OF SPECIAL GUEST

The President welcomed and introduced the Counsel General of Turkey, John Gokcen who was seated in the gallery.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2481, by House Committee on General Government Appropriations (originally sponsored by Representatives Van De Wege, Kretz, Blake, Hinkle, Ormsby, Dunshee, McCoy, Eddy, Upthegrove, Carlyle, Haler, Morrell, Warnick and Kessler)

Authorizing the department of natural resources to enter into forest biomass supply agreements.

The measure was read the second time.

MOTION

Senator Jacobsen moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that the utilization of forest biomass materials located on state lands will assist in achieving the purposes of the forest biomass energy demonstration project under RCW 43.30.835, facilitate and support the emerging forest biomass market and clean energy economy, and enable the department to encourage biomass energy development on state trust lands for the trust land's potential long-term benefits to trust beneficiaries. The legislature finds that biomass utilization on state forest lands must be accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions.

NEW SECTION. **Sec. 2.** (1) The department may maintain a list of all potential sources of forest biomass on state lands for the purposes of identifying and making forest biomass, as defined in RCW 79.02.010, available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy,

biofuels, for use in a biorefinery, or any other similar use. Prior to entering an agreement authorized by section 3(1) or 4 of this act, the department shall complete an inventory of the available biomass in the area that will be subject to the agreement, except that no inventory will be required as a prerequisite for demonstration projects authorized pursuant to RCW 43.30.835. The inventory must contain, at a minimum, an estimated amount of the forest biomass available in the area that will be subject to the agreement and a determination of the ecological and operational sustainability of the volumetric limit established by the agreement under section 3(5) of this act.

(2) The data developed for each inventoried area will be compiled for the list authorized by this section. In order to utilize the list to limit or terminate any agreement authorized under this act, the department must determine that the overall supply of forest biomass in a region or watershed has been reduced to a point such that further exploration and collection of forest biomass may not be ecologically or operationally sustainable or might otherwise threaten long-term forest health.

**NEW SECTION. Sec. 3.** (1) The department is authorized to enter forest biomass supply contracts on terms and conditions acceptable to the department for terms of up to five years, except as provided in subsection (4) of this section, for the purpose of providing a supply of forest biomass during the term of the contract except as the term of the contract may be limited under subsection (2) of this section, provided that such a contract must terminate automatically upon the removal of the agreed volume of biomass and the completion of other conditions of the contract.

(2) The department may authorize the sale of forest biomass in a contract for the sale of valuable materials under chapter 79.15 RCW provided that the department complies with the provisions of this chapter and: (a) Requires a separate bid and selects an apparent highest bidder for the forest biomass separately from the sale of valuable materials; (b) expressly includes forest biomass as an element of the sale of the valuable materials to be sold in the sales contract; or (c) a combination of (a) and (b) of this subsection. The term of the contract for the removal of biomass, if the sale is made in conformance with this subsection, must not exceed the term of the contract for valuable materials sold under chapter 79.15 RCW.

(3) The department may: (a) Enter into direct sales contracts for forest biomass, without public auction, based upon procedures adopted by the board to ensure competitive market prices and accountability; or (b) enter into contracts for forest biomass at public auction or by sealed bid to the highest bidder in a manner consistent with the sale procedures established for the sale of valuable materials in chapter 79.15 RCW or as may be adopted by the board.

(4) In the event a contracting entity makes a qualifying capital investment of fifty million dollars or more, the department may enter into an agreement for up to fifteen years. Such an agreement must include provisions that are periodically adjusted for market conditions. In addition, the conditions of the contract must include provisions that allow the department, when in the best interest of trust beneficiaries, to maintain the availability of biomass resources on state lands to existing pulp and paper operations or other existing biomass processing operations that are using such resources, in quantities typical for the period of five years preceding the effective date of this section. For the purposes of this section, "qualifying capital investment" means a planned and committed investment at the time the contract is set with the requirement that at least fifty million dollars be invested before the removal of any biomass under the contract.

(5) The department must specify in each contract an annual volumetric limit of the total cubic volume or tons of forest biomass to be supplied from a specific unit, geographically delineated area, or region within a watershed or watersheds on an ecologically and operationally sustainable basis. The department shall adopt general

procedures for making the biomass supply availability determinations under this subsection. The procedures must be written to ensure that biomass utilization on forest lands managed by the department is accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions. The department shall develop utilization standards and operational methods in recognition of the variability of on-site conditions. The department may unilaterally amend the volume to be supplied by providing the contracting party with a minimum of six months notice prior to reducing the contract volume to be supplied if the department determines, under section 2 of this act, that the available supply has been reduced to a point such that further removal of forest biomass may not be ecologically or operationally sustainable or may adversely affect long-term forest health.

(6) At the expiration of the contract term, the department may renew the contract for up to three additional five year periods on terms and conditions acceptable to the department, if the department finds: (a) An ecologically and operationally sustainable supply of forest biomass is available for the term of the contract; (b) the payment under the contract represents the fair market value at the time of the renewal; and (c) the purchaser agrees to the estimated amount of biomass material available.

(7) Where the department sells forest biomass in a contract for sale of valuable materials under subsection (2) of this section, any valuable material conveyed as timber in such a contract must count toward the achievement of annual or decadal targets developed in the sustainable timber harvest calculation required by RCW 79.10.320, or similar targets for timber harvest volume, even where the purchaser uses that material as a biomass energy feedstock. All other biomass volume conveyed as authorized in this chapter must not be counted toward such sustainable timber harvest targets.

(8) All contractors and their operations authorized under this section shall comply with all applicable state and federal laws and regulations.

**NEW SECTION. Sec. 4.** The department is authorized to lease state lands for the purpose of the sale, exploration, collection, processing, storage, stockpiling, and conversion of biomass into energy or biofuels, the development of a biorefinery, or for any other resource use derived from biomass if the department is able to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust and if the lease is in the best interest of the state and the affected trust, as follows:

(1) Leases authorized under this chapter may be entered into by public auction, in accordance with the provisions of RCW 79.13.140, or by negotiation.

(2) All leases must contain such terms and conditions as may be prescribed by the department in accordance with the provision of this act and to ensure that removal of forest biomass is ecologically and operationally sustainable. Leases authorized under this act may be for a term of no more than fifty years.

(3) For leases that involve the development of biomass processing, biofuel manufacturing, or biomass energy production facilities, the department may include provisions for reduced rent until an approved plan of development is completed and the facility is operational, provided that provisions are included to require: (a) Adequate assurances to protect the department's interest in a future rental income stream; (b) the demonstration of reasonable progress consistent with an approved plan of development; and (c) a lump sum payment to the department in the amount of the difference between the fair market rent and the reduced rent, if the approved plan of development is not completed in the time required in the plan.

(4) The department may require the payment of production rent or other compensation for the use of the land and biomass materials on the land. If the department is not entering a supply contract

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under section 3 of this act for any forest biomass to be supplied for the lease purposes from the leased land, then the department must require a royalty payment for the contribution to value of any product created by the lessee that is associated with forest biomass removed from the leased land in an amount fixed by the board.

(5) All lessees and their operations authorized under this section shall comply with all applicable state and federal laws and regulations.

**NEW SECTION. Sec. 5.** (1) For the purpose of improving forest health on state trust lands, and to better clarify the relationship of forest biomass with the by-products of forest health and fuel reduction treatments that have been traditionally utilized for other products, the department of natural resources shall evaluate how the supply agreements in sections 3 and 4 of this act could be utilized to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional types of timber purchasers. The department shall report its findings to the appropriate committees of the legislature by December 15, 2010, and the evaluation must at a minimum identify how such supply agreements could:

(a) Ensure the department of natural resources meets its fiduciary responsibility to the state's trust beneficiaries;

(b) Restore or sustain a competitive market for state timber sales;

(c) Generate returns for the trust that are commensurate with fluctuating market prices; and

(d) Ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

(2) For the purposes of proving the concepts evaluated in this section, the department may, in addition to the authorities granted in section 3 of this act, establish a five-year forest health and fuel reduction supply agreement demonstration project. Solicitation of private industry partners for such a project must be competitive, must focus on areas where traditional forest products manufacturing infrastructure and rural jobs have been lost, and should consider prioritizing partners utilizing materials for both traditional forest products and biomass energy conversion.

**Sec. 6.** RCW 79.02.010 and 2004 c 199 s 201 are each amended to read as follows:

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

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in ~~((chapter 79.90))~~ RCW 79.105.060 that are administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Department" means the department of natural resources.

(6) "Improvements" means anything considered a fixture in law placed upon or attached to lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(7) "Land bank lands" means lands acquired under RCW 79.19.020.

(8) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local governmental unit, however designated.

(9) "Public lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, and aquatic lands.

(10) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(11) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) Land bank, escheat, donations, and all other lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(12) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except: (a) Mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW; and (b) forest biomass as provided for under chapter 79.-- RCW (the new chapter created in section 14 of this act).

(13)(a) "Forest biomass" means the by-products of: Current forest management activities; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by-products of forest health treatment prescribed or permitted under chapter 76.06 RCW.

(b) "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from existing old growth forests; wood required to be left on-site under chapter 76.09 RCW, the state forest practices act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

**Sec. 7.** RCW 43.30.020 and 2009 c 163 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) "Administrator" means the administrator of the department of natural resources.

(2) "Agency" and "state agency" means any branch, department, or unit of the state government, however designated or constituted.

(3) "Board" means the board of natural resources.

(4) "Commissioner" means the commissioner of public lands.

(5) "Department" means the department of natural resources.

~~(6) ("Forest biomass" means the by products of: Current forest practices prescribed or permitted under chapter 76.09 RCW; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by products of forest health treatments prescribed or permitted under chapter 76.06 RCW. "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests, except wood removed for forest health treatments under chapter 76.06 RCW and RCW 79.15.540; wood required by chapter 76.09 RCW for large woody debris recruitment; or municipal solid waste.~~

~~(7))~~ "Supervisor" means the supervisor of natural resources.

**Sec. 8.** RCW 76.06.180 and 2007 c 480 s 7 are each amended to read as follows:

(1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forest landowners and forest land managers, consulting foresters, and other interested parties to gather information on the threat, opportunities or constraints on treatment options, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or address an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has or is likely to (i) spread to multiple forest ownerships and cause extensive damage to forests; or (ii) significantly increase forest fuel that is likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause, there are (i) insect populations building up to large scale levels; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has (i) spread to multiple forest ownerships and has caused and is likely to continue to cause extensive damage to forests; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause (i) insect populations are causing extensive damage to forests; or (ii) significantly increased forest fuels are likely to further the spread of uncharacteristic fire;

(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's web site. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard. If the forest health hazard warning or order relates to land managed by the department, the warning or order may also contain provisions for the department's utilization of any forest biomass pursuant to chapter 79.-- RCW (the new chapter created in section 14 of this act).

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forest landowner under a forest health hazard warning or the actions that must be taken by a forest landowner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the forest practices appeals board.

(a) The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served.

(b) The appeal must set forth:

(i) The name and mailing address of the appellant;

(ii) The name and mailing address of the appellant's attorney, if any;

(iii) A duplicate copy of the forest health hazard order;

(iv) A separate and concise statement of each error alleged to have been committed;

(v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and

(vi) A statement of the relief requested.

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forest landowner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forest landowner. The certification of adequacy shall be determined by the department in its sole discretion, and be provided to the requestor in writing.

**Sec. 9.** RCW 79.15.100 and 2004 c 177 s 5 are each amended to read as follows:

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(1) Valuable materials may be sold separately from the land as a "lump sum sale" or as a "scale sale."

(a) "Lump sum sale" means any sale offered with a single total price applying to all the material conveyed.

(b) "Scale sale" means any sale offered with per unit prices to be applied to the material conveyed.

(2) Payment for lump sum sales must be made as follows:

(a) Lump sum sales under five thousand dollars appraised value require full payment on the day of sale.

(b) Lump sum sales appraised at over five thousand dollars but under one hundred thousand dollars may require full payment on the day of sale.

(c) Lump sum sales requiring full payment on the day of sale may be paid in cash or by certified check, cashier's check, bank draft, or money order, all payable to the department.

(3) Except for sales paid in full on the day of sale or sales with adequate bid bonds, an initial deposit not to exceed twenty-five percent of the actual or projected purchase price shall be made on the day of sale.

(a) Sales with bid bonds are subject to the day of sale payment and replacement requirements prescribed by RCW 79.15.110.

(b) The initial deposit must be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(4) Advance payments or other adequate security acceptable to the department is required for valuable materials sold on a scale sale basis or a lump sum sale not requiring full payment on the day of sale.

(a) The purchaser must notify the department before any operation takes place on the sale site.

(b) Upon notification as provided in (a) of this subsection, the department must require advanced payment or may allow purchasers to submit adequate security.

(c) The amount of advanced payments or security must be determined by the department and must at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(d) Security may be bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security.

(5) All valuable material must be removed from the sale area within the period specified in the contract.

(a) The specified period may not exceed five years from date of purchase except for stone, sand, gravel, fill material, or building stone.

(b) The specified period for stone, sand, gravel, fill material, or building stone may not exceed thirty years.

(c) In all cases, any valuable material not removed from the land within the period specified in the contract reverts to the state. The department may utilize any remaining forest biomass in accordance with chapter 79.-- RCW (the new chapter created in section 14 of this act).

(6) The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is acting in good faith and endeavoring to remove the materials. The extension is contingent upon payment of the fees specified below.

(a) The extended time for removal shall not exceed:

(i) Forty years from date of purchase for stone, sand, gravel, fill material, or building stone;

(ii) A total of ten years beyond the original termination date for all other valuable materials.

(b) An extension fee fixed by the department will be charged based on the estimated loss of income per acre to the state resulting from the granting of the extension plus interest on the unpaid portion of the contract. The board must periodically fix and adopt by rule the interest rate, which shall not be less than six percent per annum.

(c) The sale contract shall specify:

(i) The applicable rate of interest as fixed at the day of sale and the maximum extension payment; and

(ii) The method for calculating the unpaid portion of the contract upon which interest is paid.

(d) The minimum extension fee is fifty dollars per extension plus interest on the unpaid portion of the contract.

(e) Moneys received for any extension must be credited to the same fund in the state treasury as was credited the original purchase price of the valuable material sold.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (4) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) The department does not need to comply with the provisions of this chapter for forest biomass except as described in the provisions of chapter 79.-- RCW (the new chapter created in section 14 of this act). Forest biomass may not be included in any sales contract authorized under this chapter unless the department has complied with the provisions of chapter 79.-- RCW (the new chapter created in section 14 of this act).

(9) The provisions of this section apply unless otherwise provided by statute.

**Sec. 10.** RCW 79.15.220 and 2001 c 250 s 14 are each amended to read as follows:

When the department finds valuable materials on state land that are damaged by fire, wind, flood, or from any other cause, it shall determine if the salvage of the damaged valuable materials is in the best interest of the trust for which the land is held, which may include the salvage of forest biomass under chapter 79.-- RCW (the new chapter created in section 14 of this act). If salvaging the valuable materials is in the best interest of the trust, the department shall proceed to offer the valuable materials for sale. The valuable materials, when offered for sale, must be sold in the most expeditious and efficient manner as determined by the department. In determining if the sale is in the best interest of the trust the department shall consider the net value of the valuable materials and relevant elements of the physical and social environment.

**Sec. 11.** RCW 79.15.510 and 2009 c 418 s 2 are each amended to read as follows:

(1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than twenty percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the ~~((ten [twenty] percent))~~ annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.-- RCW (the new chapter created in section 14 of this act).

**Sec. 12.** RCW 79.15.510 and 2004 c 218 s 6 are each amended to read as follows:

(1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than ten percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the ~~((ten percent))~~ annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.-- RCW (the new chapter created in section 14 of this act).

**NEW SECTION. Sec. 13.** The department of natural resources must conduct a survey of scientific literature regarding the carbon neutrality of forest biomass. The department must submit the survey results with any findings and recommendations to the appropriate committees of the legislature by December 15, 2010.

This section expires January 1, 2011.

**NEW SECTION. Sec. 14.** Sections 1 through 5 of this act constitute a new chapter in Title 79 RCW.

**NEW SECTION. Sec. 15.** Section 11 of this act expires January 1, 2014.

**NEW SECTION. Sec. 16.** Section 12 of this act takes effect January 1, 2014."

Senator Jacobsen spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Second Substitute House Bill No. 2481.

The motion by Senator Jacobsen carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "agreements;" strike the remainder of the title and insert "amending RCW 79.02.010, 43.30.020, 76.06.180, 79.15.100, 79.15.220, 79.15.510, and 79.15.510; adding a new chapter to Title 79 RCW; creating a new section; providing an effective date; and providing expiration dates."

#### MOTION

On motion of Senator Jacobsen, the rules were suspended, Second Substitute House Bill No. 2481 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Jacobsen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2481 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2481 as amended by the Senate and

the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Brown and McCaslin

SECOND SUBSTITUTE HOUSE BILL NO. 2481 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SIGNED BY THE PRESIDENT

The President signed:

ENGROSSED SUBSTITUTE SENATE BILL 6241,  
SUBSTITUTE SENATE BILL 6357,  
SUBSTITUTE SENATE BILL 6414,  
ENGROSSED SUBSTITUTE SENATE BILL 6499,  
ENGROSSED SUBSTITUTE SENATE BILL 6522,  
SUBSTITUTE SENATE BILL 6556,  
SENATE BILL 6627,  
SENATE BILL 6745,  
SUBSTITUTE SENATE BILL 6831

#### INTRODUCTION OF SPECIAL GUESTS

The President introduced 2010 Miss Omak Stampede Queen, Michelle Demmitt, who was seated at the rostrum.

#### RULING BY THE PRESIDENT

President Owen: "In ruling on the Point of Order raised by Senator Holmquist as to whether the committee amendment to Engrossed Second Substitute House Bill No. 1560 fits within the scope and object of the underlying bill, the President finds and rules as follows.

Engrossed Second Substitute House Bill No. 1560 addresses certain changes to collective bargaining for institutions of higher education. Specifically, the bill authorizes those institutions to utilize the services of the governor in negotiating collective bargaining agreements, and provides certain optional tools for conducting negotiations, by allowing for master collective bargaining agreements. Further, the bill provides a means for implementing these agreements in the event they are not completed prior to a legislative session. The President notes that the governor already represents state agencies as provided in the same statute the bill would amend.

In general, the President would characterize the bill as addressing the processes that attend collective bargaining at institutions of higher education, and introduces additional efficiencies into the process.

The committee amendment, by contrast, would provide collective bargaining rights for a group of employees who currently do not have such rights. The expansion of rights is a substantive change in the categories of employees who have the right to collectively bargain.

For these reasons, the President finds that the amendment is not within the scope and object of the underlying bill, and Senator Holmquist's point of order is well-taken.



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The Senate resumed consideration of Engrossed Second Substitute House Bill No. 1560 which was deferred on March 2, 2010.

#### MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Second Substitute House Bill No. 1560 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

Senator Holmquist spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1560.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1560 and the bill passed the Senate by the following vote: Yeas, 33; Nays, 15; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Shin and Tom

Voting nay: Senators Becker, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, Morton, Parlette, Pflug, Schoesler, Stevens, Swecker and Zarelli

Excused: Senator McCaslin

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1560, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### RULING BY THE PRESIDENT

President Owen: "In ruling on the Point of Order raised by Senator Benton as to whether the committee amendment to Second Substitute House Bill No. 2016 fits within the scope and object of the underlying bill, the President finds and rules as follows.

In considering whether a particular proposed amendment fits within the scope and object of a bill, the President begins with a thorough review of the underlying bill. Second Substitute House Bill No. 2016 revises most portions of Chapter 42.17 RCW. These changes affect the operation of the Public Disclosure Commission, the reporting requirements of candidates and political action committees, the ability of both major and minor political parties to participate in elections, the disclosure requirements of lobbyists, and the routine financial disclosures required of state employees. Although the bill contains numerous technical changes, it also introduces several significant policy changes to these areas.

The Point of Order challenges the addition of an additional policy change: limiting the use of public service announcements by certain state officials in the period shortly before an election. Although the underlying bill contains a slight reference to public service announcements, the amendment would go further and limit their use during an election year.

Consistent with his past rulings, the President considers Second Substitute House Bill No. 2016 an omnibus measure

which makes technical changes, clarifications, and substantive policy changes to a host of statutes that affect candidates, political groups, and state employees. The bill is sufficiently broad to include within its scope the limitation contained in the proposed amendment.

For these reasons, the President finds that the amendment is within the scope and object of the underlying bill, and Senator Benton's point is not well-taken."

The Senate resumed consideration of Second Substitute House Bill No. 2016 which had been deferred on March 2, 2010 the previous legislative day.

Senator McDermott spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Government Operations & Elections to Second Substitute House Bill No. 2016.

The motion by Senator Becker carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "laws;" strike the remainder of the title and insert "amending RCW 42.17.020, 42.17.367, 42.17.369, 42.17.461, 42.17.463, 42.17.350, 42.17.360, 42.17.370, 42.17.690, 42.17.380, 42.17.405, 42.17.420, 42.17.450, 42.17.030, 42.17.040, 42.17.050, 42.17.060, 42.17.065, 42.17.067, 42.17.080, 42.17.090, 42.17.3691, 42.17.093, 42.17.100, 42.17.103, 42.17.105, 42.17.550, 42.17.135, 42.17.561, 42.17.565, 42.17.570, 42.17.575, 42.17.510, 42.17.520, 42.17.540, 42.17.110, 42.17.610, 42.17.640, 42.17.645, 42.17.070, 42.17.095, 42.17.125, 42.17.660, 42.17.720, 42.17.740, 42.17.790, 42.17.680, 42.17.130, 42.17.245, 42.17.150, 42.17.155, 42.17.160, 42.17.170, 42.17.172, 42.17.175, 42.17.180, 42.17.190, 42.17.200, 42.17.210, 42.17.220, 42.17.230, 42.17.240, 42.17.241, 42.17.242, 42.17.390, 42.17.395, 42.17.397, 42.17.400, and 42.56.010; reenacting and amending RCW 42.17.2401; adding a new chapter to Title 42 RCW; creating new sections; recodifying RCW 42.17.010, 42.17.020, 42.17.035, 42.17.440, 42.17.367, 42.17.369, 42.17.460, 42.17.461, 42.17.463, 42.17.350, 42.17.360, 42.17.370, 42.17.690, 42.17.380, 42.17.405, 42.17.420, 42.17.430, 42.17.450, 42.17.030, 42.17.040, 42.17.050, 42.17.060, 42.17.065, 42.17.067, 42.17.080, 42.17.090, 42.17.3691, 42.17.093, 42.17.100, 42.17.103, 42.17.105, 42.17.550, 42.17.135, 42.17.561, 42.17.565, 42.17.570, 42.17.575, 42.17.510, 42.17.520, 42.17.530, 42.17.540, 42.17.110, 42.17.610, 42.17.640, 42.17.645, 42.17.700, 42.17.070, 42.17.095, 42.17.120, 42.17.125, 42.17.650, 42.17.660, 42.17.670, 42.17.720, 42.17.730, 42.17.740, 42.17.770, 42.17.780, 42.17.790, 42.17.680, 42.17.760, 42.17.128, 42.17.130, 42.17.710, 42.17.750, 42.17.245, 42.17.150, 42.17.155, 42.17.160, 42.17.170, 42.17.172, 42.17.175, 42.17.180, 42.17.190, 42.17.200, 42.17.210, 42.17.220, 42.17.230, 42.17.240, 42.17.2401, 42.17.241, 42.17.242, 42.17.390, 42.17.395, 42.17.397, 42.17.400, 42.17.410, 42.17.900, 42.17.910, 42.17.911, 42.17.912, 42.17.920, 42.17.930, 42.17.940, 42.17.945, 42.17.950, 42.17.955, 42.17.960, 42.17.961, 42.17.962, 42.17.963, 42.17.964, 42.17.965, and 42.17.966; repealing RCW 42.17.131, 42.17.362, 42.17.365, 42.17.375, 42.17.465, 42.17.467, 42.17.469, 42.17.471, 42.17.562, 42.17.620, and 42.17.647; providing an effective date; and declaring an emergency."

#### MOTION

On motion of Senator McDermott, the rules were suspended, Second Substitute House Bill No. 2016 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McDermott spoke in favor of passage of the bill.

Senators Roach, Sheldon and Brandland spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2016 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2016 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 32; Nays, 16; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Shin, Swecker and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, Morton, Parlette, Pflug, Roach, Sheldon, Stevens and Zarelli

Excused: Senator McCaslin

SECOND SUBSTITUTE HOUSE BILL NO. 2016 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1591, by House Committee on Transportation (originally sponsored by Representatives Uptegrove, Clibborn, Simpson and Liias)

Concerning the use of certain transportation benefit district funds.

The measure was read the second time.

#### MOTION

On motion of Senator Marr, the rules were suspended, Second Substitute House Bill No. 1591 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Marr and Swecker spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Delvin, Senator Carrell was excused.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1591.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1591 and the bill passed the Senate by the following vote: Yeas, 44; Nays, 2; Absent, 1; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Gordon,

Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Swecker and Zarelli

Voting nay: Senators Holmquist and Stevens

Absent: Senator Tom

Excused: Senators Carrell and McCaslin

SECOND SUBSTITUTE HOUSE BILL NO. 1591, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Marr, Senator Tom was excused.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2777, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Goodman, O'Brien, Driscoll, Kessler, Maxwell, Finn, Hurst, Williams, Appleton, Hudgins, Kelley, Ericks, Morrell, McCoy, Seaquist, Green, Carlyle, Conway, Pearson and Simpson)

Modifying domestic violence provisions.

The measure was read the second time.

#### MOTION

Senator Kline moved that the following committee striking amendment by the Committee on Judiciary be adopted:

Strike everything after the enacting clause and insert the following:

#### "PART ONE

#### INTENT

NEW SECTION. **Sec. 101.** The legislature intends to improve the lives of persons who suffer from the adverse effects of domestic violence and to require reasonable, coordinated measures to prevent domestic violence from occurring. The legislature intends to give law enforcement and the courts better tools to identify violent perpetrators of domestic violence and hold them accountable. The legislature intends to: Increase the safety afforded to individuals who seek protection of public and private agencies involved in domestic violence prevention; improve the ability of agencies to address the needs of victims and their children and the delivery of services; upgrade the quality of treatment programs; and enhance the ability of the justice system to respond quickly and fairly to domestic violence. In order to improve the lives of persons who have, or may suffer, the effects of domestic violence the legislature intends to achieve more uniformity in the decision-making processes at public and private agencies that address domestic violence by reducing inconsistencies and duplications allowing domestic violence victims to achieve safety and stability in their lives.

#### PART TWO

#### LAW ENFORCEMENT/ARREST PROVISIONS

FIFTY SECOND DAY, MARCH 3, 2010

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**Sec. 201.** RCW 10.31.100 and 2006 c 138 s 23 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence ~~((between the))~~ of each person(s) involved, including whether the conduct was part of an ongoing pattern of abuse.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(8) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(9) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(10) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(11) Except as specifically provided in subsections (2), (3), (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(12) No police officer may be held criminally or civilly liable for making an arrest pursuant to ~~((RCW 10.31.100))~~ subsection (2) or (8) of this section if the police officer acts in good faith and without malice.

**NEW SECTION. Sec. 202.** A new section is added to chapter 36.28A RCW to read as follows:

(1)(a) When funded, the Washington association of sheriffs and police chiefs shall convene a work group to develop a model policy regarding the reporting of domestic violence as defined in RCW 10.99.020 to law enforcement in cases where the victim is unable or unwilling to make a report in the jurisdiction where the alleged crime occurred.

(b) The model policy must include policies and procedures related to:

(i) Collecting and securing evidence; and

(ii) Creating interlocal agreements between law enforcement agencies.

(2) In developing the model policy under subsection (1)(a) of this section, the association shall consult with appropriate stakeholders and government agencies.

### PART THREE

#### NO-CONTACT AND PROTECTION ORDERS

**Sec. 301.** RCW 10.99.045 and 2000 c 119 s 19 are each amended to read as follows:

(1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020 shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020 and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3)(a) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The court may include in the order any conditions authorized under RCW 9.41.800 and 10.99.040.

(b) For the purposes of (a) of this subsection, the prosecutor shall provide for the court's review:

(i) The defendant's criminal history, if any, that occurred in Washington or any other state;

(ii) If available, the defendant's criminal history that occurred in any tribal jurisdiction; and

(iii) The defendant's individual order history.

(c) For the purposes of (b) of this subsection, criminal history includes all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in (d) of this subsection before the date of the appearance.

(d) The periods applicable to previous convictions and orders of deferred prosecution are:

(i) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and

(ii) Seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For the purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and ~~((4))~~ (6).

**Sec. 302.** RCW 26.50.020 and 1992 c 111 s 8 are each amended to read as follows:

(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she

has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) The courts defined in RCW 26.50.010(~~((3))~~) (4) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(7) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

(8) For the purposes of this section "next friend" means any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

**NEW SECTION. Sec. 303.** A new section is added to chapter 26.50 RCW to read as follows:

(1) The administrative office of the courts shall update the law enforcement information form which it provides for the use of a petitioner who is seeking an ex parte protection order in such a fashion as to prompt the person to disclose on the form whether the person who the petitioner is seeking to restrain has a disability, brain injury, or impairment requiring special assistance.

(2) Any peace officer who serves a protection order on a respondent with the knowledge that the respondent requires special assistance due to a disability, brain injury, or impairment shall make a reasonable effort to accommodate the needs of the respondent to the extent practicable without compromise to the safety of the petitioner.

**Sec. 304.** RCW 26.50.060 and 2009 c 439 s 2 are each amended to read as follows:

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

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(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Restrain the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260;

(j) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

~~((k))~~ (k) Consider the provisions of RCW 9.41.800;

~~((l))~~ (l) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent and may prohibit the respondent from interfering with the petitioner's efforts to remove the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found; and

~~((m))~~ (m) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(g) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

**Sec. 305.** RCW 26.50.070 and 2000 c 119 s 16 are each amended to read as follows:

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence,

workplace, or school of the other, or from the day care or school of a child until further order of the court;

(c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(e) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; ~~((and))~~

(f) Considering the provisions of RCW 9.41.800; and

(g) Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260.

(2) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 26.50.085 or by mail under RCW 26.50.123. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or by mail is permitted. Except as provided in RCW 26.50.050, 26.50.085, and 26.50.123, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(5) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(6) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte order of protection shall be filed with the court.

**NEW SECTION. Sec. 306.** A new section is added to chapter 26.50 RCW to read as follows:

(1) In a proceeding in which a petition for an order for protection under this chapter is sought, a court of this state may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within this state;

(b) The individual submits to the jurisdiction of this state by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred within this state;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred outside this state and are part of an ongoing pattern of domestic violence or stalking that has an adverse effect on the

petitioner or a member of the petitioner's family or household and the petitioner resides in this state; or

(ii) As a result of acts of domestic violence or stalking, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; or

(e) There is any other basis consistent with RCW 4.28.185 or with the Constitutions of this state and the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this state. For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state."

**NEW SECTION. Sec. 307.** A new section is added to chapter 7.90 RCW to read as follows:

(1) In a proceeding in which a petition for a sexual assault protection order is sought under this chapter, a court of this state may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within this state;

(b) The individual submits to the jurisdiction of this state by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred within this state;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a sexual assault protection order occurred outside this state and are part of an ongoing pattern of sexual assaults or stalking that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in this state; or

(ii) As a result of acts of stalking or a sexual assault, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; or

(e) There is any other basis consistent with RCW 4.28.185 or with the constitutions of this state and the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this state. For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written

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statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state."

**NEW SECTION. Sec. 308.** A new section is added to chapter 10.14 RCW to read as follows:

(1) In a proceeding in which a petition for an order for protection under this chapter is sought, a court of this state may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within this state;

(b) The individual submits to the jurisdiction of this state by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred within this state;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of an order for protection occurred outside this state and are part of an ongoing pattern of harassment that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in this state; or

(ii) As a result of acts of harassment, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; or

(e) There is any other basis consistent with RCW 4.28.185 or with the constitutions of this state and the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this state. For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state."

**Sec. 309.** RCW 10.99.040 and 2000 c 119 s 18 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when

any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer-based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

NEW SECTION. **Sec. 310.** A new section is added to chapter 2.56 RCW to read as follows:

(1) The administrative office of the courts shall develop guidelines by December 1, 2011, for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued by courts in this state.

(2) The guidelines developed under subsection (1) of this section must include:

(a) A process to allow any party named in a no-contact or protection order to petition for the purpose of reconciling duplicate or conflicting orders; and

(b) A procedure to address no-contact and protection order data sharing between court jurisdictions in this state.

(3) By January 1, 2011, the administrative office of the courts shall provide a report back to the legislature concerning the progress made to develop the guidelines required by this section.

#### PART FOUR

#### SENTENCING REFORMS

**Sec. 401.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read as follows:

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

(1) "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.

(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.

(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); 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.



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(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 other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

~~((21))~~ (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.

~~((22))~~ (23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((23))~~ (24) "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.

~~((24))~~ (25) "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.

~~((25))~~ (26) "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.

~~((26))~~ (27) "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.

~~((27))~~ (28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((28))~~ (29) "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.

~~((29))~~ (30) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

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

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st 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;

(w) 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 Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((30))~~ (31) "Nonviolent offense" means an offense which is not a violent offense.

~~((31))~~ (32) "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 convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((32))~~ (33) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((33))~~ (34) "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) Malicious Harassment (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.

~~((34))~~ (35) "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 ~~((34))~~ (35)(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.

~~((35))~~ (36) "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; or (iii) a

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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.

~~((36))~~ (37) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((37))~~ (38) "Public school" has the same meaning as in RCW 28A.150.010.

~~((38))~~ (39) "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, 26.26, 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.

(40) "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.

~~((39))~~ (41) "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.

~~((40))~~ (42) "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.

~~((41))~~ (43) "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.

~~((42))~~ (44) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(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; or

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

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(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.

~~((43))~~ (45) "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.

~~((44))~~ (46) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((45))~~ (47) "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.

~~((46))~~ (48) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((47))~~ (49) "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.

~~((48))~~ (50) "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.

~~((49))~~ (51) "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.

~~((50))~~ (52) "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.

~~((54))~~ (53) "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.

~~((53))~~ (54) "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.

~~((53))~~ (55) "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. 402.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are each reenacted and amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of

coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

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(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of ~~(the)~~ a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

**Sec. 403.** RCW 9.94A.525 and 2008 c 231 s 3 are each amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is 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)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

(f) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW 9A.44.130(11), count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW 9A.44.130(11), which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

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(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense; and

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection.

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence.

**NEW SECTION. Sec. 404.** A new section is added to chapter 10.99 RCW to read as follows:

(1) In sentencing for a crime of domestic violence as defined in this chapter, courts of limited jurisdiction shall consider, among other factors, whether:

(a) The defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;

(b) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and

(c) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years.

(2)(a) In sentencing for a crime of domestic violence as defined in this chapter, the prosecutor shall provide for the court's review:

(i) The defendant's criminal history, if any, that occurred in Washington or any other state;

(ii) If available, the defendant's prior criminal history that occurred in any tribal jurisdiction; and

(iii) The defendant's individual order history.

(b) For the purposes of (a) of this subsection, criminal history includes all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in (c) of this subsection before the date of sentencing.

(c) The periods applicable to previous convictions and orders of deferred prosecution are:

(i) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and

(ii) Seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For the purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis.

**Sec. 405.** RCW 3.66.068 and 2001 c 94 s 2 are each amended to read as follows:

For a period not to exceed five years after imposition of sentence for a defendant sentenced for a domestic violence offense or under RCW 46.61.5055 and two years after imposition of sentence for all other offenses, the court has continuing jurisdiction and authority to suspend or defer the execution of all or any part of its sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. For the purposes of this section, "domestic violence offense" means a crime listed in RCW 10.99.020 that is not a felony offense.

**Sec. 406.** RCW 3.50.330 and 2001 c 94 s 5 are each amended to read as follows:

For a period not to exceed five years after imposition of sentence for a defendant sentenced for a domestic violence offense or under RCW 46.61.5055 and two years after imposition of sentence for all other offenses, the court shall have continuing jurisdiction and authority to suspend or defer the execution of all or any part of the sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence. For the purposes of this section, "domestic violence offense" means a crime listed in RCW 10.99.020 that is not a felony offense.

**Sec. 407.** RCW 35.20.255 and 2005 c 400 s 5 are each amended to read as follows:

(1) Judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violations of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence including installment payment of fines, fix the terms of any such deferral or suspension,

and provide for such probation as in their opinion is reasonable and necessary under the circumstances of the case, but in no case shall it extend for more than five years from the date of conviction for a defendant to be sentenced for a domestic violence offense or under RCW 46.61.5055 and two years from the date of conviction for all other offenses. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence. For the purposes of this subsection, "domestic violence offense" means a crime listed in RCW 10.99.020 that is not a felony offense.

(2)(a) If a defendant whose sentence has been deferred requests permission to travel or transfer to another state, the director of probation services or a designee thereof shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the director or designee shall:

(i) Notify the department of corrections of the defendant's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the defendant of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the defendant while another state supervises the defendant pursuant to the compact;

(v) Resume supervision if the defendant returns to this state before the period of deferral expires.

(b) The defendant shall receive credit for time served while being supervised by another state.

(c) If the probationer is returned to the state at the request of the receiving state under rules of the interstate compact for adult offender supervision, the department of corrections is responsible for the cost of returning the probationer.

(d) The state of Washington, the department of corrections and its employees, and any city and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence.

## PART FIVE

### TREATMENT/SERVICES FOR PERPETRATORS AND VICTIMS

**Sec. 501.** RCW 26.50.150 and 1999 c 147 s 1 are each amended to read as follows:

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the department of social and health services and meet minimum standards for domestic violence treatment purposes. The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs ~~((that accept perpetrators of domestic violence into treatment to satisfy court orders or that represent the programs as ones that treat domestic violence perpetrators))~~. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including but not limited to: Current and past violence

history; a lethality risk assessment; history of treatment from past domestic violence perpetrator treatment programs; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;

(b) A release to prior and current treatment agencies to provide information on the perpetrator to the program; and

(c) A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

(3) Treatment must be for a minimum treatment period defined by the secretary of the department by rule. The weekly treatment sessions must be in a group unless there is a documented, clinical reason for another modality. Any other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews, may be concomitant with the weekly group treatment sessions described in this section but not a substitute for it.

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence. If the perpetrator or the victim has a minor child, treatment must specifically include education regarding the effects of domestic violence on children, such as the emotional impacts of domestic violence on children and the long-term consequences that exposure to incidents of domestic violence may have on children.

(5) Satisfactory completion of treatment must be contingent upon the perpetrator meeting specific criteria, defined by rule by the secretary of the department, and not just upon the end of a certain period of time or a certain number of sessions.

(6) The program must have policies and procedures for dealing with reoffenses and noncompliance.

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

(8) The secretary of the department may adopt rules and establish fees as necessary to implement this section.

(9) The department may conduct on-site monitoring visits as part of its plan for certifying domestic violence perpetrator programs and monitoring implementation of the rules adopted by the secretary of the department to determine compliance with the minimum qualifications for domestic violence perpetrator programs. The applicant or certified domestic violence perpetrator program shall cooperate fully with the department in the monitoring visit and provide all program and management records requested by the department to determine the program's compliance with the minimum certification qualifications and rules adopted by the department.

## PART SIX

### MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 601.** A new section is added to chapter 2.56 RCW to read as follows:



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(1)(a) The administrative office of the courts shall, within existing resources, convene a work group to address the issue of transmitting information regarding revocation of concealed pistol licenses, upon the entry of orders issued under chapter 10.99, 26.50, or 26.52 RCW.

(b) The work group must include a superior court judge, a district court judge, a municipal court judge, an attorney whose practice includes a significant amount of time representing defendants in criminal trials, and representatives from the following entities: The Washington state patrol, the Washington association of sheriffs and police chiefs, the prosecuting attorneys association, the department of licensing, and the county clerks. Other members may be added as deemed appropriate by the work group.

(2) The work group shall review the methods currently used to transfer information between the courts, the county clerks, the prosecutors, the department of licensing, the Washington state patrol, and local law enforcement agencies regarding the suspension and revocation of concealed pistol licenses.

(3) The goal of the work group is to identify methods to expedite the transfer of information to enhance the safety of law enforcement and the public.

(4) The work group shall report its recommendations to the affected entities and the legislature not later than December 1, 2010. All agency representatives shall cooperate fully with the work group's efforts."

Senator Kline spoke in favor of adoption of the committee striking amendment.

#### MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli to the committee striking amendment be adopted: On page 50, after line 4, insert the following:

"**Sec. 602.** RCW 68.50.160 and 2007 c 156 s 24 are each amended to read as follows:

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- (a) The surviving spouse or state registered domestic partner.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent.

(e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or

charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

~~\_\_\_~~ (5) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

~~((S))~~ (6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent."

Senators Zarelli and Kline spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Zarelli on page 50, after line 4 to the committee striking amendment to Engrossed Substitute House Bill No. 2777.

The motion by Senator Zarelli carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary as amended to Engrossed Substitute House Bill No. 2777.

The motion by Senator Kline carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 1 of the title, after "provisions;" strike the remainder of the title and insert "amending RCW 10.31.100, 10.99.045, 26.50.020, 26.50.060, 26.50.070, 10.99.040, 9.94A.030, 9.94A.525, 3.66.068, 3.50.330, 35.20.255, and 26.50.150; reenacting and amending RCW 9.94A.535; adding a new section to chapter 36.28A RCW; adding new sections to chapter 26.50 RCW; adding a new section to chapter 7.90 RCW; adding a new section to chapter 10.14 RCW; adding new sections to chapter 2.56 RCW; adding a new section to chapter 10.99 RCW; and creating a new section."

On page 50, line 8 of the title amendment, after "35.20.255," strike "and 26.50.150" and insert "26.50.150, and 68.50.160"

#### MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 2777 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2777 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2777 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmner, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Carrell and McCaslin

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2777 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2271, by Representatives Liias, Rodne, Sells, Clibborn, Johnson, Takko, Van De Wege, Springer, Williams, Finn, Nelson, Seaquist and Simpson

Authorizing state forces to perform work on ferry vessels or terminals when estimated costs are less than one hundred twenty thousand dollars.

The measure was read the second time.

#### MOTION

Senator Haugen moved that the following committee striking amendment by the Committee on Transportation be not adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** It is the intent of the legislature that final recommendations from the joint transportation committee ferry study, submitted to the legislature during the 2009 regular legislative session, be enacted by the legislature and implemented by the department of transportation as soon as practicable in order to benefit from the efficiencies and cost savings identified in the recommendations. It is also the intent of the legislature to make various additional policy changes aimed at further efficiencies and cost savings. Since the study began in 2006, recommendations have been made with regard to long range planning and implementing the most efficient and effective balance between ferry capital and operating investments. It is intended that this act, the 2009-2011 omnibus transportation appropriations act, and subsequent transportation appropriations acts serve as vehicles for enacting these recommendations in order to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars.

**Sec. 2.** RCW 47.60.355 and 2007 c 512 s 11 are each amended to read as follows:

(1) Terminal and vessel preservation funding requests shall only be for assets in the life-cycle cost model.

(2) Terminal and vessel preservation funding requests that exceed five million dollars per project must be accompanied by a

predesign study. The predesign study must include all elements required by the office of financial management.

**Sec. 3.** RCW 47.60.365 and 2007 c 512 s 12 are each amended to read as follows:

The department shall develop terminal and vessel design standards that:

(1) Adhere to vehicle level of service standards as described in RCW 47.06.140;

(2) Adhere to operational strategies as described in RCW 47.60.327; and

(3) Choose the most efficient balance between capital and operating investments by using a life-cycle cost analysis.

**Sec. 4.** RCW 47.60.375 and 2008 c 124 s 3 are each amended to read as follows:

(1) The capital plan must adhere to the following:

(a) A current ridership demand forecast;

(b) Vehicle level of service standards as described in RCW 47.06.140;

(c) Operational strategies as described in RCW 47.60.327; and

(d) Terminal and vessel design standards as described in RCW 47.60.365.

(2) The capital plan must include the following:

(a) A current vessel preservation plan;

(b) A current systemwide vessel rebuild and replacement plan as described in RCW 47.60.377;

(c) A current vessel deployment plan; and

(d) A current terminal preservation plan that adheres to the life-cycle cost model on capital assets as described in RCW 47.60.345.

**Sec. 5.** RCW 47.60.385 and 2008 c 124 s 6 are each amended to read as follows:

(1) Terminal improvement, vessel improvement, and vessel acquisition project funding requests must adhere to the capital plan(-

~~(2) Requests for terminal improvement design and construction funding must~~), include route-based planning, and be submitted with a predesign study that:

(a) Includes all elements required by the office of financial management;

(b) Separately identifies basic terminal and vessel elements essential for operation and their costs;

(c) Separately identifies additional elements to provide ancillary revenue and customer comfort and their costs;

(d) Includes construction phasing options that are consistent with forecasted ridership increases;

(e) Separately identifies additional elements requested by local governments and the cost and proposed funding source of those elements;

(f) Separately identifies multimodal elements and the cost and proposed funding source of those elements; ~~((and))~~

(g) Identifies all contingency amounts(-

~~(h)(3) When planning for new vessel acquisitions, the department must evaluate the long term vessel operating costs related to fuel efficiency and staffing);~~

(h) Identifies any terminal, vessel, or other capital modifications that would be required as a result of the proposed capital project;

(i) Includes planned service modifications as a result of the proposed capital project, and the consistency of those service modifications with the capital plan; and

(j) Demonstrates the evaluation of long-term operating costs including fuel efficiency, staffing, and preservation.

(2) The department shall prioritize vessel preservation and acquisition funding requests over vessel improvement funding requests.

**NEW SECTION. Sec. 6.** A new section is added to chapter 47.60 RCW to read as follows:

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(1) In addition to the requirements of RCW 47.60.385(1), initial requests for, and substantial modification requests to, vessel acquisition funding must be submitted with a predesign study that:

- (a) Includes a business decision case on vessel sizing;
- (b) Includes an updated vessel deployment plan demonstrating maximum use of existing vessels, and an updated systemwide vessel rebuild and replacement plan;
- (c) Includes an analysis that demonstrates that acquiring a new vessel or improving an existing vessel is more cost-effective than other alternatives considered. At a minimum, alternatives explored must include:
  - (i) Alternatives to new vessel construction that increase capacity of existing vessels;
  - (ii) Service level changes in lieu of adding vessel capacity; and
  - (iii) Acquiring existing vessels or existing vessel plans rather than wholly new vessels or vessel plans; and
- (d) Demonstrates that the vessel proposed for improvement, construction, or purchase, if intended to replace an existing vessel or to place an existing vessel into inactive or reserve status, is consistent with the scheduled replacements in the rebuild and replacement plan.

(2) In addition to the requirements of RCW 47.60.385(1), initial requests for, and substantial modification requests to, vessel improvement funding must be submitted with a predesign study that includes:

- (a) An explanation of any regulatory changes necessitating the improvement;
- (b) The requirements under subsection (1) of this section, if the improvement modifies the capacity of a vessel;
- (c) A cost-benefit analysis of any modifications designed to improve fuel efficiency, including potential impacts on vessel maintenance and repair; and
- (d) An assessment of out-of-service time associated with making the improvement and ongoing preservation of the improvement.

NEW SECTION. **Sec. 7.** A new section is added to chapter 47.60 RCW to read as follows:

(1) The legislature finds measuring the performance of Washington state ferries requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently, the department must develop a set of metrics that measure that performance and report to the transportation committees of the house of representatives and senate and to the office of financial management on the development of these measurements along with recommendations to the 2011 legislature on which measurements must become a part of the next transportation budget.

(2) Annually, the department shall report to the transportation committees of the legislature statistics regarding its on-time arrival and departure status on a route-by-route and month-by-month basis, as well as an annual route-by-route and systemwide basis, weighted by the number of customers on each sailing and distinguishing peak period on-time performance. The statistics must include reasons for any delays over ten minutes from the scheduled time. The statistics must be prominently displayed on the Washington state ferries' web site. Each Washington state ferries vessel and terminal must prominently display the statistics as they relate to their specific route.

NEW SECTION. **Sec. 8.** (1) Signage must be prominently displayed at each terminal and on each vessel that informs the public that assaults on Washington state employees will be prosecuted to the full extent of the law.

(2) The department shall investigate the frequency, severity, and prosecutorial results of assaults on Washington state ferries employees and, if appropriate, make recommendations to the

transportation committees of the senate and house of representatives during the 2011 legislative session regarding methods to decrease the number of assaults on employees and procedures for prosecuting those who assault employees.

(3) This section expires June 30, 2011.

**Sec. 9.** RCW 47.28.030 and 2007 c 218 s 90 are each amended to read as follows:

(1)(a) A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right-of-way purposes may be repaired or renovated pending the use of such right-of-way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars(~~(= PROVIDED, That)~~).

(b) When delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(c) When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor.

(d) To enable a larger number of small businesses, and minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(2) The rules adopted under this section:

~~((4))~~ (a) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

~~((2))~~ (b) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

~~((3))~~ (c) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

(3) The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

(4)(a) For the period of July 1, 2010, through June 30, 2011, work for less than seventy-five thousand dollars may be performed on ferry vessels and terminals by state forces.

(b) The department shall hire a disinterested, third party to conduct an independent analysis to identify methods of reducing out-of-service times for vessel maintenance, preservation, and improvement projects. The analysis must include options to extend the hours and days of operation at Eagle Harbor maintenance facility, consolidating work while vessels are at shipyards by having state forces perform services traditionally performed at Eagle Harbor at the shipyard, and decreasing the allowable time at

shipyards. The analysis must also compare the out-of-service vessel times of performing services by state forces versus contracting out those services which in turn must be used to form a recommendation as to what the threshold of work performed on ferry vessels and terminals by state forces should be. This analysis must be presented to the transportation committees of the senate and house of representatives by December 1, 2010.

(c) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the senate and house of representatives by December 1, 2010. The proposed program must:

(i) Improve the basis for budgeting vessel maintenance, preservation, and improvement costs and for projecting those costs into a sixteen-year financial plan;

(ii) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards; and

(iii) Be based on the service plan in the capital plan, recognizing that vessel preservation and improvement needs may vary by route.

(d) In developing the proposed ferry vessel maintenance, preservation, and improvement program, the department shall consider the following, related to reducing vessel out-of-service time:

(i) The costs compared to benefits of Eagle Harbor repair and maintenance facility operations options to include staffing costs and benefits in terms of reduced out-of-service time;

(ii) The maintenance requirements for on-vessel staff, including the benefits of a systemwide standard;

(iii) The costs compared to benefits of staff performing preservation or maintenance work, or both, while the vessel is underway, tied up between sailings, or not deployed;

(iv) A review of the department's vessel maintenance, preservation, and improvement program contracting process and contractual requirements;

(v) The costs compared to benefits of allowing for increased costs associated with expedited delivery;

(vi) A method for comparing the anticipated out-of-service time of proposed projects and other projects planned during the same construction period;

(vii) Coordination with required United States coast guard dry dockings;

(viii) A method for comparing how proposed projects relate to the service requirements of the route on which the vessel normally operates; and

(ix) A method for evaluating the ongoing maintenance and preservation costs associated with proposed improvement projects.

**Sec. 10.** RCW 47.64.006 and 1989 c 327 s 1 are each amended to read as follows:

The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees ~~((as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions)).~~

**Sec. 11.** RCW 47.64.120 and 2006 c 164 s 3 are each amended to read as follows:

(1) The employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by RCW 47.64.270, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Any retirement system or retirement benefits shall not be subject to collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

**Sec. 12.** RCW 47.64.170 and 2007 c 160 s 1 are each amended to read as follows:

(1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall

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cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) Until a new collective bargaining agreement is in effect, the terms and conditions of the previous collective bargaining agreement shall remain in force. It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect.

(8)(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

(9) If, after the compensation and fringe benefit provisions of an agreement or arbitration award are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement or award.

**Sec. 13.** RCW 47.64.200 and 2006 c 164 s 7 are each amended to read as follows:

As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. ~~((Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel is limited to selecting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.))~~ The arbitrator shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. The employee organization and the employer may mutually agree to the impasse procedure under which the arbitrator or panel may issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320.

**Sec. 14.** RCW 47.64.280 and 2006 c 164 s 18 are each amended to read as follows:

(1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chair of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

(2) The commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out

of the operation of the ferry system as provided in RCW 47.64.150; (b) provide for impasse mediation as required in RCW 47.64.210; ~~and (c) ((provide salary surveys as required in RCW 47.64.220; and~~ ~~(d)))~~ perform those duties required in RCW 47.64.300.

(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

(b) The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.

(c) The commission shall adopt rules of procedure under chapter 34.05 RCW.

(d) The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter.

**Sec. 15.** RCW 47.64.320 and 2006 c 164 s 14 are each amended to read as follows:

(1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter, except that health care benefits are not subject to interest arbitration.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

~~(b))~~ (b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

~~((c))~~ (c) The constitutional and statutory authority of the employer;

~~((d))~~ (d) Stipulations of the parties;

~~((e))~~ (e) ~~The results of the salary survey as required in RCW 47.64.220;~~

~~(f))~~ (f) ~~Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;~~

~~(g))~~ (g) Changes in any of the foregoing circumstances during the pendency of the proceedings;

~~((h))~~ (h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; ~~(and~~

~~(i))~~ (i) The ability of the state to retain ferry employees;

~~(j))~~ (j) Comparison of wages, hours, employee benefits, and

conditions of employment of the involved ferry employees with those of other public employees in the state;

(i) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received;

(j) The implicit price deflator for personal consumption index; and

(k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

**NEW SECTION. Sec. 16.** A new section is added to chapter 47.60 RCW to read as follows:

The department shall not allow free passage on any ferry vessel operated by the department to:

(1) Any department employee unless it is directly related to the employee's job duties, directly reporting to duty, or directly returning home from duty;

(2) Any former department employee or their families; or

(3) Any department employee's family members.

**NEW SECTION. Sec. 17.** The following acts or parts of acts are each repealed:

(1) RCW 47.61.010 (Authority to enter into agreement and apply for financial assistance) and 1984 c 7 s 338 & 1965 ex.s. c 56 s 1;

(2) RCW 47.61.020 (Bonds for matching funds--Issuance and sale) and 1965 ex.s. c 56 s 2;

(3) RCW 47.61.030 (Term of bonds--Terms and conditions) and 1965 ex.s. c 56 s 3;

(4) RCW 47.61.040 (Bonds--Signatures--Registration--Where payable--Negotiable instruments) and 1965 ex.s. c 56 s 4;

(5) RCW 47.61.050 (Bonds--Denominations--Manner and terms of sale--Legal investment for state funds) and 1965 ex.s. c 56 s 5;

(6) RCW 47.61.060 (Proceeds of bonds--Deposit and use) and 1965 ex.s. c 56 s 6;

(7) RCW 47.61.070 (Statement describing nature of bond obligation--Pledge of excise taxes) and 1965 ex.s. c 56 s 7;

(8) RCW 47.61.080 (Bonds to reflect terms and conditions of grant agreement) and 1965 ex.s. c 56 s 8;

(9) RCW 47.61.090 (Designation of funds to repay bonds and interest) and 1984 c 7 s 339 & 1965 ex.s. c 56 s 9;

(10) RCW 47.61.100 (Bond repayment procedure--Highway bond retirement fund) and 1965 ex.s. c 56 s 10;

(11) RCW 47.61.110 (Sums in excess of bond retirement requirements--Use) and 1965 ex.s. c 56 s 11;

(12) RCW 47.60.240 (Liability to persons other than shippers or passengers--Limitation) and 1984 c 7 s 318 & 1961 c 13 s 47.60.240;

(13) RCW 47.60.395 (Evaluation of cost allocation methodology and preservation and improvement costs--Exception) and 2009 c 470 s 707 & 2007 c 512 s 15;

(14) RCW 47.60.649 (Passenger-only ferry service--Finding) and 1998 c 166 s 1;

(15) RCW 47.60.652 (Passenger-only ferry service--Vessel and terminal acquisition, procurement, and construction) and 1998 c 166 s 2;

(16) RCW 47.60.654 (Passenger-only ferry service--Contingency) and 1998 c 166 s 3;

(17) RCW 47.60.658 (Passenger-only ferry service between Vashon and Seattle) and 2007 c 223 s 8 & 2006 c 332 s 3;

(18) RCW 47.60.770 (Jumbo ferry construction--Notice) and 1993 c 493 s 1;

(19) RCW 47.60.772 (Jumbo ferry construction--Bidding documents) and 1993 c 493 s 2;

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(20) RCW 47.60.774 (Jumbo ferry construction--Procedure on conclusion of evaluation) and 1993 c 493 s 4;

(21) RCW 47.60.776 (Jumbo ferry construction--Contract) and 1993 c 493 s 5;

(22) RCW 47.60.778 (Jumbo ferry construction--Bid deposits--Low bidder claiming error) and 1996 c 18 s 9 & 1993 c 493 s 6; and

(23) RCW 47.60.780 (Jumbo ferry construction--Propulsion system acquisition) and 1994 c 181 s 2.

**NEW SECTION. Sec. 18.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 2 of the title, after "terminals;" strike the remainder of the title and insert "amending RCW 47.60.355, 47.60.365, 47.60.375, 47.60.385, 47.28.030, 47.64.006, 47.64.120, 47.64.170, 47.64.200, 47.64.280, and 47.64.320; adding new sections to chapter 47.60 RCW; creating new sections; repealing RCW 47.61.010, 47.61.020, 47.61.030, 47.61.040, 47.61.050, 47.61.060, 47.61.070, 47.61.080, 47.61.090, 47.61.100, 47.61.110, 47.60.240, 47.60.395, 47.60.649, 47.60.652, 47.60.654, 47.60.658, 47.60.770, 47.60.772, 47.60.774, 47.60.776, 47.60.778, and 47.60.780; providing an expiration date; and declaring an emergency."

The President declared the question before the Senate to be the motion by Senator Haugen to not adopt the committee striking amendment by the Committee on Transportation to House Bill No. 2271.

The motion by Senator Haugen carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Haugen moved that the following striking amendment by Senators Haugen and Swecker be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** It is the intent of the legislature that final recommendations from the joint transportation committee ferry study, submitted to the legislature during the 2009 regular legislative session, be enacted by the legislature and implemented by the department of transportation as soon as practicable in order to benefit from the efficiencies and cost savings identified in the recommendations. It is also the intent of the legislature to make various additional policy changes aimed at further efficiencies and cost savings. Since the study began in 2006, recommendations have been made with regard to long range planning and implementing the most efficient and effective balance between ferry capital and operating investments. It is intended that this act, the 2009-2011 omnibus transportation appropriations act, and subsequent transportation appropriations acts serve as vehicles for enacting these recommendations in order to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars.

**Sec. 2.** RCW 47.60.355 and 2007 c 512 s 11 are each amended to read as follows:

(1) Terminal and vessel preservation funding requests shall only be for assets in the life-cycle cost model.

(2) Terminal and vessel preservation funding requests that exceed five million dollars per project must be accompanied by a predesign study. The predesign study must include all elements required by the office of financial management.

**Sec. 3.** RCW 47.60.365 and 2007 c 512 s 12 are each amended to read as follows:

The department shall develop terminal and vessel design standards that:

(1) Adhere to vehicle level of service standards as described in RCW 47.06.140;

(2) Adhere to operational strategies as described in RCW 47.60.327; and

(3) Choose the most efficient balance between capital and operating investments by using a life-cycle cost analysis.

**Sec. 4.** RCW 47.60.375 and 2008 c 124 s 3 are each amended to read as follows:

(1) The capital plan must adhere to the following:

(a) A current ridership demand forecast;

(b) Vehicle level of service standards as described in RCW 47.06.140;

(c) Operational strategies as described in RCW 47.60.327; and

(d) Terminal and vessel design standards as described in RCW 47.60.365.

(2) The capital plan must include the following:

(a) A current vessel preservation plan;

(b) A current systemwide vessel rebuild and replacement plan as described in RCW 47.60.377;

(c) A current vessel deployment plan; and

(d) A current terminal preservation plan that adheres to the life-cycle cost model on capital assets as described in RCW 47.60.345.

**Sec. 5.** RCW 47.60.385 and 2008 c 124 s 6 are each amended to read as follows:

(1) Terminal improvement, vessel improvement, and vessel acquisition project funding requests must adhere to the capital plan:(-

~~(2) Requests for terminal improvement design and construction funding must~~), include route-based planning, and be submitted with a predesign study that:

(a) Includes all elements required by the office of financial management;

(b) Separately identifies basic terminal and vessel elements essential for operation and their costs;

(c) Separately identifies additional elements to provide ancillary revenue and customer comfort and their costs;

(d) Includes construction phasing options that are consistent with forecasted ridership increases;

(e) Separately identifies additional elements requested by local governments and the cost and proposed funding source of those elements;

(f) Separately identifies multimodal elements and the cost and proposed funding source of those elements; ~~(and)~~

(g) Identifies all contingency amounts:(-

~~(h)(3) When planning for new vessel acquisitions, the department must evaluate the long-term vessel operating costs related to fuel efficiency and staffing~~);

(h) Identifies any terminal, vessel, or other capital modifications that would be required as a result of the proposed capital project;

(i) Includes planned service modifications as a result of the proposed capital project, and the consistency of those service modifications with the capital plan; and

(j) Demonstrates the evaluation of long-term operating costs including fuel efficiency, staffing, and preservation.

(2) The department shall prioritize vessel preservation and acquisition funding requests over vessel improvement funding requests.

**NEW SECTION. Sec. 6.** A new section is added to chapter 47.60 RCW to read as follows:

(1) In addition to the requirements of RCW 47.60.385(1), initial requests for, and substantial modification requests to, vessel acquisition funding must be submitted with a predesign study that:

(a) Includes a business decision case on vessel sizing;

(b) Includes an updated vessel deployment plan demonstrating maximum use of existing vessels, and an updated systemwide vessel rebuild and replacement plan;

(c) Includes an analysis that demonstrates that acquiring a new vessel or improving an existing vessel is more cost-effective than other alternatives considered. At a minimum, alternatives explored must include:

(i) Alternatives to new vessel construction that increase capacity of existing vessels;

(ii) Service level changes in lieu of adding vessel capacity; and

(iii) Acquiring existing vessels or existing vessel plans rather than wholly new vessels or vessel plans; and

(d) Demonstrates that the vessel proposed for improvement, construction, or purchase, if intended to replace an existing vessel or to place an existing vessel into inactive or reserve status, is consistent with the scheduled replacements in the rebuild and replacement plan.

(2) In addition to the requirements of RCW 47.60.385(1), initial requests for, and substantial modification requests to, vessel improvement funding must be submitted with a predesign study that includes:

(a) An explanation of any regulatory changes necessitating the improvement;

(b) The requirements under subsection (1) of this section, if the improvement modifies the capacity of a vessel;

(c) A cost-benefit analysis of any modifications designed to improve fuel efficiency, including potential impacts on vessel maintenance and repair; and

(d) An assessment of out-of-service time associated with making the improvement and ongoing preservation of the improvement.

**NEW SECTION. Sec. 7.** A new section is added to chapter 47.60 RCW to read as follows:

(1) The legislature finds measuring the performance of Washington state ferries requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently, the department must develop a set of metrics that measure that performance and report to the transportation committees of the house of representatives and senate and to the office of financial management on the development of these measurements along with recommendations to the 2011 legislature on which measurements must become a part of the next transportation budget.

(2) Annually, the department shall report to the transportation committees of the legislature statistics regarding its on-time arrival and departure status on a route-by-route and month-by-month basis, as well as an annual route-by-route and systemwide basis, weighted by the number of customers on each sailing and distinguishing peak period on-time performance. The statistics must include reasons for any delays over ten minutes from the scheduled time. The statistics must be prominently displayed on the Washington state ferries' web site. Each Washington state ferries vessel and terminal must prominently display the statistics as they relate to their specific route.

**NEW SECTION. Sec. 8.** (1) Signage must be prominently displayed at each terminal and on each vessel that informs the public that assaults on Washington state employees will be prosecuted to the full extent of the law.

(2) The department shall investigate the frequency, severity, and prosecutorial results of assaults on Washington state ferries employees and, if appropriate, make recommendations to the transportation committees of the senate and house of representatives during the 2011 legislative session regarding methods to decrease the number of assaults on employees and procedures for prosecuting those who assault employees.

(3) This section expires June 30, 2011.

**Sec. 9.** RCW 47.28.030 and 2007 c 218 s 90 are each amended to read as follows:

(1)(a) A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right-of-way purposes may be repaired or renovated pending the use of such right-of-way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars(~~(= PROVIDED, That)~~).

(b) When delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(c) When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor.

(d) To enable a larger number of small businesses, and minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars.

(2) The rules adopted under this section:

~~((+))~~ (a) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

~~((=))~~ (b) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

~~((=))~~ (c) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

(3) The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

(4)(a) For the period of July 1, 2010, through June 30, 2011, work for less than seventy-five thousand dollars may be performed on ferry vessels and terminals by state forces.

(b) The department shall hire a disinterested, third party to conduct an independent analysis to identify methods of reducing out-of-service times for vessel maintenance, preservation, and improvement projects. The analysis must include options to extend the hours and days of operation at Eagle Harbor maintenance facility, consolidating work while vessels are at shipyards by having state forces perform services traditionally performed at Eagle Harbor at the shipyard, and decreasing the allowable time at shipyards. The analysis must also compare the out-of-service vessel times of performing services by state forces versus contracting out those services which in turn must be used to form a recommendation as to what the threshold of work performed on ferry vessels and terminals by state forces should be. This analysis



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must be presented to the transportation committees of the senate and house of representatives by December 1, 2010.

(c) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the senate and house of representatives by December 1, 2010. The proposed program must:

(i) Improve the basis for budgeting vessel maintenance, preservation, and improvement costs and for projecting those costs into a sixteen-year financial plan;

(ii) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards; and

(iii) Be based on the service plan in the capital plan, recognizing that vessel preservation and improvement needs may vary by route.

(d) In developing the proposed ferry vessel maintenance, preservation, and improvement program, the department shall consider the following, related to reducing vessel out-of-service time:

(i) The costs compared to benefits of Eagle Harbor repair and maintenance facility operations options to include staffing costs and benefits in terms of reduced out-of-service time;

(ii) The maintenance requirements for on-vessel staff, including the benefits of a systemwide standard;

(iii) The costs compared to benefits of staff performing preservation or maintenance work, or both, while the vessel is underway, tied up between sailings, or not deployed;

(iv) A review of the department's vessel maintenance, preservation, and improvement program contracting process and contractual requirements;

(v) The costs compared to benefits of allowing for increased costs associated with expedited delivery;

(vi) A method for comparing the anticipated out-of-service time of proposed projects and other projects planned during the same construction period;

(vii) Coordination with required United States coast guard dry dockings;

(viii) A method for comparing how proposed projects relate to the service requirements of the route on which the vessel normally operates; and

(ix) A method for evaluating the ongoing maintenance and preservation costs associated with proposed improvement projects.

**Sec. 10.** RCW 47.64.006 and 1989 c 327 s 1 are each amended to read as follows:

The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees ~~((as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions)).~~

**Sec. 11.** RCW 47.64.120 and 2006 c 164 s 3 are each amended to read as follows:

(1) The employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at

reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by RCW 47.64.270, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Any retirement system or retirement benefits shall not be subject to collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

**Sec. 12.** RCW 47.64.170 and 2007 c 160 s 1 are each amended to read as follows:

(1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at

least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) ~~((Until a new collective bargaining agreement is in effect, the terms and conditions of the previous collective bargaining agreement shall remain in force.))~~ It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect. After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8)(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

(9) If, after the compensation and fringe benefit provisions of an agreement or arbitration award are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement or award.

**Sec. 13.** RCW 47.64.200 and 2006 c 164 s 7 are each amended to read as follows:

As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. ~~((Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel is limited to selecting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.))~~ The arbitrator shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. The employee organization and the employer may mutually agree to the impasse procedure under which the arbitrator or panel may issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320.

**Sec. 14.** RCW 47.64.280 and 2006 c 164 s 18 are each amended to read as follows:

(1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chair of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

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(2) The commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150; (b) provide for impasse mediation as required in RCW 47.64.210; ~~and~~ (c) ~~((provide salary surveys as required in RCW 47.64.220; and~~ ~~(d)))~~ perform those duties required in RCW 47.64.300.

(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

(b) The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.

(c) The commission shall adopt rules of procedure under chapter 34.05 RCW.

(d) The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter.

**Sec. 15.** RCW 47.64.320 and 2006 c 164 s 14 are each amended to read as follows:

(1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter, except that health care benefits are not subject to interest arbitration.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

~~((b)))~~ (c) The constitutional and statutory authority of the employer;

~~((c)))~~ (d) Stipulations of the parties;

~~((d)))~~ ~~The results of the salary survey as required in RCW 47.64.220;~~

~~—(e) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;~~

~~—(f)))~~ (e) Changes in any of the foregoing circumstances during the pendency of the proceedings;

~~((e)))~~ (f) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; ~~((and~~ ~~—(h)))~~ (g) The ability of the state to retain ferry employees;

(h) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of other public employees in the state;

(i) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received;

(j) The implicit price deflator for personal consumption index; and

(k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

**NEW SECTION. Sec. 16.** A new section is added to chapter 47.60 RCW to read as follows:

The department shall not allow free passage on any ferry vessel operated by the department to:

(1) Any department employee unless it is directly related to the employee's job duties, directly reporting to duty, or directly returning home from duty;

(2) Any former department employee or their families; or

(3) Any department employee's family members.

**NEW SECTION. Sec. 17.** The following acts or parts of acts are each repealed:

(1) RCW 47.61.010 (Authority to enter into agreement and apply for financial assistance) and 1984 c 7 s 338 & 1965 ex.s. c 56 s 1;

(2) RCW 47.61.020 (Bonds for matching funds--Issuance and sale) and 1965 ex.s. c 56 s 2;

(3) RCW 47.61.030 (Term of bonds--Terms and conditions) and 1965 ex.s. c 56 s 3;

(4) RCW 47.61.040 (Bonds--Signatures--Registration--Where payable--Negotiable instruments) and 1965 ex.s. c 56 s 4;

(5) RCW 47.61.050 (Bonds--Denominations--Manner and terms of sale--Legal investment for state funds) and 1965 ex.s. c 56 s 5;

(6) RCW 47.61.060 (Proceeds of bonds--Deposit and use) and 1965 ex.s. c 56 s 6;

(7) RCW 47.61.070 (Statement describing nature of bond obligation--Pledge of excise taxes) and 1965 ex.s. c 56 s 7;

(8) RCW 47.61.080 (Bonds to reflect terms and conditions of grant agreement) and 1965 ex.s. c 56 s 8;

(9) RCW 47.61.090 (Designation of funds to repay bonds and interest) and 1984 c 7 s 339 & 1965 ex.s. c 56 s 9;

(10) RCW 47.61.100 (Bond repayment procedure--Highway bond retirement fund) and 1965 ex.s. c 56 s 10;

(11) RCW 47.61.110 (Sums in excess of bond retirement requirements--Use) and 1965 ex.s. c 56 s 11;

(12) RCW 47.60.240 (Liability to persons other than shippers or passengers--Limitation) and 1984 c 7 s 318 & 1961 c 13 s 47.60.240;

(13) RCW 47.60.395 (Evaluation of cost allocation methodology and preservation and improvement costs--Exception) and 2009 c 470 s 707 & 2007 c 512 s 15;

(14) RCW 47.60.649 (Passenger-only ferry service--Finding) and 1998 c 166 s 1;

(15) RCW 47.60.652 (Passenger-only ferry service--Vessel and terminal acquisition, procurement, and construction) and 1998 c 166 s 2;

(16) RCW 47.60.654 (Passenger-only ferry service--Contingency) and 1998 c 166 s 3;

(17) RCW 47.60.658 (Passenger-only ferry service between Vashon and Seattle) and 2007 c 223 s 8 & 2006 c 332 s 3;

(18) RCW 47.60.770 (Jumbo ferry construction--Notice) and 1993 c 493 s 1;

(19) RCW 47.60.772 (Jumbo ferry construction--Bidding documents) and 1993 c 493 s 2;

(20) RCW 47.60.774 (Jumbo ferry construction--Procedure on conclusion of evaluation) and 1993 c 493 s 4;

(21) RCW 47.60.776 (Jumbo ferry construction--Contract) and 1993 c 493 s 5;

(22) RCW 47.60.778 (Jumbo ferry construction--Bid deposits--Low bidder claiming error) and 1996 c 18 s 9 & 1993 c 493 s 6; and

(23) RCW 47.60.780 (Jumbo ferry construction--Propulsion system acquisition) and 1994 c 181 s 2.

**NEW SECTION. Sec. 18.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 19.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Senator Haugen spoke in favor of adoption of the striking amendment.

#### MOTION

Senator Pflug moved that the following amendment by Senator Pflug to the striking amendment be adopted:

On page 16, after line 11 of the amendment, insert the following:

"The department shall not reimburse any department employee for mileage or travel time costs for commuting between the employee's home residence and work assignment when the employee bids on the work assignment location."

Senator Pflug demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

Senators Pflug and Swecker spoke in favor of adoption of the amendment to the striking amendment.

Senator Haugen spoke against the adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Pflug on page 16, line 11, to the striking amendment to House Bill No. 2271.

#### ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Pflug to the striking amendment and the amendment was adopted by the following vote: Yeas, 33; Nays, 15; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Franklin, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Kilmer, King, Marr, Morton, Oemig, Parlette, Pflug, Ranker, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Brown, Fairley, Fraser, Gordon, Haugen, Jacobsen, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Prentice, Pridemore and Regala

Excused: Senator McCaslin

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Haugen and Swecker as amended to House Bill No. 2271.

The motion by Senator Haugen carried and the striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "terminals;" strike the remainder of the title and insert "amending RCW 47.60.355, 47.60.365, 47.60.375, 47.60.385, 47.28.030, 47.64.006, 47.64.120, 47.64.170, 47.64.200, 47.64.280, and 47.64.320; adding new sections to chapter 47.60 RCW; creating new sections; repealing RCW 47.61.010, 47.61.020, 47.61.030, 47.61.040, 47.61.050, 47.61.060, 47.61.070, 47.61.080, 47.61.090, 47.61.100, 47.61.110, 47.60.240, 47.60.395, 47.60.649, 47.60.652, 47.60.654, 47.60.658, 47.60.770, 47.60.772, 47.60.774, 47.60.776, 47.60.778, and 47.60.780; providing an expiration date; and declaring an emergency."

#### MOTION

On motion of Senator Swecker, the rules were suspended, House Bill No. 2271 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Haugen and Swecker spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Marr, Senators Hargrove and Kline were excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2271 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2271 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senator McCaslin

HOUSE BILL NO. 2271 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2649, by House Committee on Commerce & Labor (originally sponsored by Representatives Green, Conway, Moeller and Williams)

Correcting references in RCW 50.29.021(2)(c)(i), (c)(ii), and (3)(e), RCW 50.29.062(2)(b)(i)(B) and (2)(b)(iii), and RCW 50.29.063(1)(b) and (2)(a)(ii) to unemployment insurance

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statutes concerning employer experience rating accounts and contribution rates.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 2649 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

MOTION

On motion of Senator Marr, Senators Kastama and Kline were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2649.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2649 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Kastama, Kline and McCaslin

SUBSTITUTE HOUSE BILL NO. 2649, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 3076, by House Committee on Ways & Means (originally sponsored by Representatives Dickerson and Kenney)

Concerning the involuntary treatment act.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The Washington institute for public policy shall, in collaboration with the department of social and health services and other applicable entities, undertake a search for a validated mental health assessment tool or combination of tools to be used by designated mental health professionals when undertaking assessments of individuals for detention, commitment, and revocation under the involuntary treatment act pursuant to chapter 71.05 RCW.

(2) This section expires June 30, 2011.

NEW SECTION. **Sec. 2.** A new section is added to chapter 71.05 RCW to read as follows:

(1) In determining whether a person is gravely disabled or presents a likelihood of serious harm, the court or evaluating designated mental health professional must consider the symptoms and behavior of the respondent in light of all available evidence or information concerning the respondent's historical behavior, as disclosed by the clinical record or credible witnesses with knowledge of the respondent.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support an inference of grave disability or likelihood of serious harm when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is highly probable.

NEW SECTION. **Sec. 3.** A new section is added to chapter 71.05 RCW to read as follows:

(1) Whenever a person who is the subject of an involuntary commitment order under this chapter is discharged from an evaluation and treatment facility or state hospital, the evaluation and treatment facility or state hospital shall provide notice of the person's discharge to the designated mental health professional office responsible for the initial commitment and the designated mental health professional office that serves the county in which the person is expected to reside. The evaluation and treatment facility or state hospital must also provide these offices with a copy of any less restrictive order or conditional release order entered in conjunction with the discharge of the person, unless the evaluation and treatment facility or state hospital has entered into a memorandum of understanding obligating another entity to provide these documents.

(2) The notice and documents referred to in subsection (1) of this section shall be provided as soon as possible and no later than one business day following the discharge of the person. Notice is not required under this section if the discharge is for the purpose of transferring the person for continued detention and treatment under this chapter at another treatment facility.

(3) The department shall maintain and make available an updated list of contact information for designated mental health professional offices around the state.

NEW SECTION. **Sec. 4.** Section 2 of this act is effective January 1, 2012.

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, 2010, in the omnibus appropriations act, this act is null and void."

Senator Hargrove spoke in favor of adoption of the committee striking amendment.

MOTION

Senator Hargrove moved that the following amendment by Senators Brandland and Hargrove to the committee striking amendment be adopted.

On page 2, line 27, after "purposes of", insert "sections one through four"

On page 2, line 29, after "act," strike "this act is" and insert "sections one through four of this act are"

On page 2, after line 26, insert the following:

"NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A RCW to read as follows:

(1) Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation."

Re-number the sections consecutively and correct any internal references accordingly.

Senator Hargrove spoke in favor of adoption of the amendment to the committee striking amendment.

#### MOTION

On motion of Senator Delvin, Senator Carrell was excused.

The President declared the question before the Senate to be the adoption of the amendment by Senators Brandland and Hargrove on page 2, line 27 to the committee striking amendment to Second Substitute House Bill No. 3076.

The motion by Senator Hargrove carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Second Substitute House Bill No. 3076.

The motion by Senator Hargrove carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 2 of the title, after "act;" strike the remainder of the title and insert "adding new sections to chapter 71.05 RCW; creating new sections; providing an effective date; and providing an expiration date."

On page 3, line 2 of the title amendment, after "chapter", insert "9.94 RCW and chapter"

#### MOTION

On motion of Senator Hargrove, the rules were suspended, Second Substitute House Bill No. 3076 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 3076 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 3076 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Gordon,

Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Carrell, Kline and McCaslin

SECOND SUBSTITUTE HOUSE BILL NO. 3076 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2402, by House Committee on Finance (originally sponsored by Representatives White, Rolfes, Armstrong, Haler, Nelson, Roberts, Maxwell, Dickerson, Crouse, Jacks, Walsh, Wallace, Sells, Ormsby, Kenney, Williams, Blake, Chase, Morris, Campbell, Appleton, Carlyle, Conway, Bailey, Hope and Haigh)

Concerning a property tax exemption for property owned by a nonprofit organization and used for the purpose of a farmers market.

The measure was read the second time.

#### MOTION

Senator Hatfield moved that the following committee amendment by the Committee on Agriculture & Rural Economic Development be adopted.

On page 2, after line 35, insert the following:

"Sec. 2. RCW 84.36.020 and 1994 c 124 s 16 are each amended to read as follows:

The following real and personal property (~~shall be~~) is exempt from taxation:

(1) All lands, buildings, and personal property required for necessary administration and maintenance, used, or to the extent used, exclusively for public burying grounds or cemeteries without discrimination as to race, color, national origin or ancestry;

(2) All churches, personal property, and the ground, not exceeding five acres in area, upon which a church of any nonprofit recognized religious denomination is or (~~shall~~) will be built, together with a parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property. The area exempted (~~shall~~) in any case includes all ground covered by the church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property and the structures and ground necessary for street access, parking, light, and ventilation, but the area of unoccupied ground exempted in such cases, in connection with church, parsonage, convent, and buildings and improvements required for the maintenance and safeguarding of such property, (~~shall~~) does not exceed the equivalent of one hundred twenty by one hundred twenty feet except where additional unoccupied land may be required to conform with state or local codes, zoning, or licensing requirements. The parsonage and convent need not be on land contiguous to the church property. Except as otherwise provided in this subsection, to be exempt the property must be wholly used for church purposes(=PROVIDED, That)). The loan or rental of property otherwise exempt under this (paragraph) subsection to a nonprofit organization, association, or corporation, or school for use for an eleemosynary activity ((shall)) or for use for activities related to a farmers market, does not nullify the exemption provided in this (paragraph) subsection if the rental income, if any, is reasonable and is devoted solely to the operation

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and maintenance of the property. However, activities related to a farmers market may not occur on the property more than fifty-three days each assessment year. For the purposes of this section, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170.

Renumber the remaining sections consecutively and correct any internal references accordingly.

Senator Hatfield spoke in favor of adoption of the committee amendment.

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Agriculture & Rural Economic Development to Substitute House Bill No. 2402.

The motion by Senator Hatfield carried and the committee amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "market;" strike the remainder of the title and insert "amending RCW 84.36.037 and 84.36.020; creating a new section; and providing an expiration date."

#### MOTION

On motion of Senator Hatfield, the rules were suspended, Substitute House Bill No. 2402 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hatfield spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2402 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2402 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Gordon

Excused: Senators Kline and McCaslin

SUBSTITUTE HOUSE BILL NO. 2402 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2740, by Representatives Seaquist and Angel

Regarding the definition of land use decision in the land use petition act.

The measure was read the second time.

#### MOTION

On motion of Senator Fairley, the rules were suspended, House Bill No. 2740 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Fairley spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2740.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2740 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Kline and McCaslin

HOUSE BILL NO. 2740, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 1541, by Representatives Seaquist, Conway, Crouse and Simpson

Granting half-time service credit for half-time educational employment prior to January 1, 1987, in plans 2 and 3 of the school employees' retirement system and the public employees' retirement system.

The measure was read the second time.

#### MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 1541 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1541.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1541 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala,

Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Kline and McCaslin

HOUSE BILL NO. 1541, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Marr, Senator Pridemore was excused.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2913, by House Committee on Education Appropriations (originally sponsored by Representatives Haigh, Priest, Quall, Haler, Kessler, Kagi, Nealey, Finn, Maxwell, Sullivan and Kenney)

Authorizing innovative interdistrict cooperative high school programs.

The measure was read the second time.

#### MOTION

On motion of Senator McAuliffe, the rules were suspended, Engrossed Substitute House Bill No. 2913 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

#### MOTION

On motion of Senator Marr, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2913.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2913 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Kline, McCaslin, Prentice and Pridemore

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2913, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED HOUSE BILL NO. 2830, by Representatives Simpson, Bailey, Kirby, Kelley, Rodne and Nelson

Addressing credit union regulatory enforcement powers.

The measure was read the second time.

#### MOTION

On motion of Senator Berkey, the rules were suspended, Engrossed House Bill No. 2830 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2830.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2830 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Kline, McCaslin, Prentice and Pridemore

ENGROSSED HOUSE BILL NO. 2830, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2734, by Representatives Kagi, Lias, Chase, Miloscia, Clibborn, Wallace, Maxwell, Nelson, Simpson and Santos

Allowing federally qualified community health centers to buy surplus real property from the department of transportation.

The measure was read the second time.

#### MOTION

Senator Haugen moved that the following committee striking amendment by the Committee on Transportation be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 47.12.063 and 2006 c 17 s 2 are each amended to read as follows:

(1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

(a) Any other state agency;

(b) The city or county in which the property is situated;

(c) Any other municipal corporation;

(d) Regional transit authorities created under chapter 81.112 RCW;



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(e) The former owner of the property from whom the state acquired title;

(f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

(g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;

(i) To any other owner of real property required for transportation purposes;

(j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; ((e))

(k) A federally qualified community health center as defined in RCW 82.04.4311; or

(l) A federally recognized Indian tribe within whose reservation boundary the property is located.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund.

NEW SECTION. **Sec. 2.** Section 1 of this act expires June 30, 2012."

Senator Haugen spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to House Bill No. 2734.

The motion by Senator Haugen carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "transportation;" strike the remainder of the title and insert "amending RCW 47.12.063; and providing an expiration date."

MOTION

On motion of Senator Haugen, the rules were suspended, House Bill No. 2734 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Haugen and Swecker spoke in favor of passage of the bill.

MOTION

On motion of Senator Marr, Senator Brown was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2734 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2734 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 31; Nays, 14; Absent, 0; Excused, 4.

Voting yea: Senators Berkey, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Shin and Swecker

Voting nay: Senators Becker, Benton, Brandland, Hewitt, Holmquist, Honeyford, Morton, Parlette, Pflug, Roach, Schoesler, Stevens, Tom and Zarelli

Excused: Senators Brown, Kline, McCaslin and Prentice  
HOUSE BILL NO. 2734 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2527, by House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris, Chase, Hudgins and Jacks)

Regarding the energy facility site evaluation council.

The measure was read the second time.

MOTION

Senator Fraser moved that the following committee striking amendment by the Committee on Environment, Water & Energy be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 80.50.020 and 2007 c 325 s 1 are each amended to read as follows:

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

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility, alternative energy resource, or electrical transmission facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.

(8) "Electrical transmission facilities" means electrical power lines and related equipment.

(9) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(10) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel (~~including nuclear materials~~) for distribution of electricity by electric utilities.

(11) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(12) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(13) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(14) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(15) "Energy plant" means the following facilities together with their associated facilities:

(a) Any nuclear power facility where the primary purpose is to produce and sell electricity;

~~(b) Any nonnuclear stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more (including associated facilities. For the purposes of this subsection, "floating thermal power plants" means a thermal power plant that is))~~ suspended on the surface of water by means of a barge, vessel, or other floating platform;

~~((b))~~ (c) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

~~((c))~~ (d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

~~((d))~~ (e) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

~~((e))~~ (f) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products except where such biofuel production is undertaken at existing operating industrial facilities.

(16) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

(17) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

(18) "Alternative energy resource" ~~(means)~~ includes energy facilities of the following types: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(19) "Secretary" means the secretary of the United States department of energy.

(20) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with cities, towns, and counties prior to accepting applications for all transmission facilities.

(21) "Preapplicant" means a person considering applying for a site certificate agreement for any transmission facility.

(22) "Biofuel" has the same meaning as defined in RCW 43.325.010.

**Sec. 2.** RCW 80.50.030 and 2001 c 214 s 4 are each amended to read as follows:

(1) There is created and established the energy facility site evaluation council.

(2)(a) The chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chair may designate a member of the council to serve as acting chair in the

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event of the chair's absence. The salary of the chair shall be determined under RCW 43.03.040. The chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3)(a) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (i) Department of ecology;
- (ii) Department of fish and wildlife;
- (iii) Department of community, trade, and economic development;
- (iv) Utilities and transportation commission; and
- (v) Department of natural resources.

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

- (i) Department of agriculture;
- (ii) Department of health;
- (iii) Military department; and
- (iv) Department of transportation.

(c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after May 8, 2001. For applications filed before May 8, 2001, council membership is mandatory for those agencies listed in (b) of this subsection.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy (~~(plant)~~) facility is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.

**Sec. 3.** RCW 80.50.071 and 2006 c 196 s 5 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification. ~~((The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:))~~ Each applicant shall pay such reasonable costs as are actually and necessarily incurred by the council in processing an application.

(a) ~~((A fee of twenty five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council))~~ Each applicant shall, at the time of application submission, deposit fifty thousand dollars, or such greater amount as may be specified by the council after consultation with the applicant. Costs that may be charged against the deposit include, but are not limited to, independent consultants' costs, councilmember's wages, employee benefits, costs of a hearing examiner, costs of a court reporter, staff salaries, wages and employee benefits, goods and services, travel expenses, and miscellaneous direct expenses as arise directly from processing an application.

~~((The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant. PROVIDED, That said costs exceeding a total of the twenty five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.))~~

(b) ~~((Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council and its members as designated in RCW 80.50.030 in processing the application. Such costs shall include, but are not limited to, council member's wages, employee benefits, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application))~~ The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

~~((Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.))~~

(c) The council shall submit to each applicant a statement of such expenditures (~~(actually)~~) made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

~~((2))~~ (2) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction ~~(and)~~, operation, and site restoration of the facility.

(a) Each certificate holder, within thirty days of execution of the site certification agreement, shall have on deposit ~~((twenty))~~ fifty thousand dollars, or such ~~((other))~~ greater amount as may be specified by the council ~~((rule, to cover costs provided for by subsection (1)(c) of this section))~~ after consultation with the certificate holder. ~~((Reasonable and necessary costs of the council directly attributable to))~~ Costs that may be charged against the deposit include, but are not limited to, those specified in subsection (1)(a) of this section as arise from inspection and determination of compliance by the certificate holder with the terms of the certification ~~((relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit)).~~

(b) The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That if the actual ~~((reasonable, and necessary))~~ expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

~~((2))~~ (3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

~~((3))~~ (4) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder.

**NEW SECTION. Sec. 4.** Rule-making costs incurred by the energy facility site evaluation council in implementing and administering this act shall be proportionately divided among the certificate holders and applicants directly affected by this act."

Senator Fraser spoke in favor of adoption of the committee striking amendment.

#### MOTION

Senator Ranker moved that the following amendment by Senator Ranker and others to the committee striking amendment be adopted:

On page 4, line 4 of the amendment, before "industrial" strike "operating"

Senator Ranker spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Ranker and others on page 4, line 4 to the committee striking amendment to Substitute House Bill No. 2527.

The motion by Senator Ranker carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the

Committee on Environment, Water & Energy as amended to Substitute House Bill No. 2527.

The motion by Senator Fraser carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "council;" strike the remainder of the title and insert "amending RCW 80.50.020, 80.50.030, and 80.50.071; and creating a new section."

#### MOTION

On motion of Senator Fraser, the rules were suspended, Substitute House Bill No. 2527 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fraser and Honeyford spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2527 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2527 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 43; Nays, 2; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist and Stevens

Excused: Senators Brown, Kline, McCaslin and Prentice

SUBSTITUTE HOUSE BILL NO. 2527 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2419, by Representatives Bailey, Nelson and Kirby

Modifying the exemption to the three-year active transacting requirement for foreign or alien insurer applicants.

The measure was read the second time.

#### MOTION

On motion of Senator Berkey, the rules were suspended, House Bill No. 2419 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

#### MOTION

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On motion of Senator Schoesler, Senator Pflug was excused.

MOTION

On motion of Senator Marr, Senator Ranker was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2419.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2419 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yeas: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Brown, McCaslin, Pflug and Prentice

HOUSE BILL NO. 2419, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2460, by Representatives Smith, Nelson, Liias, Van De Wege, Blake, Bailey, Upthegrove, Kenney and Moeller

Regarding organic products.

The measure was read the second time.

MOTION

Senator Hatfield moved that the following committee striking amendment by the Committee on Agriculture & Rural Economic Development be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 15.86.010 and 2002 c 220 s 1 are each amended to read as follows:

The legislature recognizes a public benefit in:

(1) Establishing standards governing the labeling and advertising of ~~((food))~~ agricultural products and ~~((agricultural))~~ commodities as ~~((organically produced))~~ organic products or transitional products;

(2) Providing certification under the ~~((federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder))~~ national organic program for agricultural products marketed and labeled using the term "organic" or a derivative of the term "organic;"

(3) Providing access for Washington producers, processors, and handlers to domestic and international markets for organic ~~((food))~~ products; ~~((and))~~

(4) Establishing a state organic program or obtaining federal accreditation as a certifying agent under the ~~((federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder))~~ national organic program; and

(5) Establishing a brand name materials list for registration of

inputs that comply with national, international, or other organic standards.

Sec. 2. RCW 15.86.020 and 2002 c 220 s 2 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic ~~((food))~~ product" means any agricultural product, in whole or in part, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic and that is produced, handled, and processed in accordance with this chapter.

(3) "Producer" means any person or organization who or which grows, raises, or produces an agricultural product.

(4) "Handler" means any person who sells, distributes, or packs organic or transitional products.

(5) "Transitional ~~((food))~~ product" means any ~~((food))~~ agricultural product that ~~((satisfies all of the))~~ meets requirements ~~((of))~~ for organic ~~((food))~~ certification, except ~~((the time requirements as defined in rule))~~ that the organic production areas have not been free of prohibited substances for thirty-six months. Use of prohibited substances must have ceased for at least twelve months prior to the harvest of a transitional product.

(6) "Organic certifying agent" means any third-party certification organization that is recognized by the director as being one which imposes, for certification, standards consistent with this chapter.

(7) "Processor" means any person engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, or otherwise processing of an organic ~~((food))~~ or transitional product.

(8) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(9) "Department" means the state department of agriculture.

(10) "Represent" means to hold out as or to advertise.

(11) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

(12) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling.

(13) "Fertilizer" means a single or blended substance containing one or more recognized plant nutrients which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(14) "Label" means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(15) "Labeling" includes all written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

(16) "National organic program" means the program administered by the United States department of agriculture pursuant to 7 C.F.R. Part 205, which implements the federal organic food production act of 1990 (7 U.S.C. Sec. 6501 et seq.).

(17) "Registrant" means the person registering a material on the

brand name materials list under the provisions of this chapter.

(18) "Certification" or "certified" means a determination documented by a certificate of organic operation made by a certifying agent that a production or handling operation is in compliance with the national organic program or with international standards.

(19) "Compost" means the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.

(20) "Crop production aid" means any substance, material, structure, or device that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

(21) "Livestock production aid" means any substance, material, structure, or device that is used to aid a producer in the production of livestock such as parasitocides, medicines, and feed additives.

(22) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that contain biosolids as defined in chapter 70.95J RCW.

(23) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(24) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide and that is in a package or container separate from the pesticide. "Spray adjuvant" includes, but is not limited to, wetting agents, spreading agents, deposit builders, adhesives, emulsifying agents, deflocculating agents, and water modifiers or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect. "Spray adjuvant" does not include products that are only intended to mark the location where a pesticide is applied.

(25) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus, except a virus on or in a living human being or other animal, which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) Any substance or mixture of substances intended to be used as a spray adjuvant; and

(d) Any other substances intended for such use as may be named by the director by rule.

(26) "Postharvest material" means any substance, material, structure, or device that is used in the postharvest handling of agricultural products.

(27) "Processing aid" means a substance that is added to a food:

(a) During processing, but is removed in some manner from the food before it is packaged in its finished form;

(b) During processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(c) For its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

(28) "Manufacturer" means a person that compounds, produces, granulates, mixes, blends, repackages, or otherwise alters the composition of materials.

**Sec. 3.** RCW 15.86.030 and 2002 c 220 s 3 are each amended to read as follows:

(1) To be labeled, sold, or represented as an organic (~~food~~) product, a product (~~shall~~) **must** be produced under standards established (~~under RCW 15.86.060~~) **in this chapter or rules adopted pursuant to this chapter.** A producer, processor, or handler shall not represent, sell, or offer for sale any (~~food~~) agricultural product with the representation that the product is (~~an~~) organic (~~food~~) if the producer, processor, or handler knows, or has reason to know, that the (~~food~~) product has not been produced, processed, or handled in accordance with standards established (~~under RCW 15.86.060~~) **in this chapter or rules adopted pursuant to this chapter.**

(2) The department may conduct evaluations in retail establishments to verify compliance with organic labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program.

**Sec. 4.** RCW 15.86.060 and 2002 c 220 s 4 are each amended to read as follows:

(1) The director shall adopt rules, in conformity with chapter 34.05 RCW, as the director believes are appropriate for the adoption of the national organic program (~~under the federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder~~) and for the proper administration of this chapter.

(2)(a) The director shall issue orders to producers, processors, or handlers whom (~~he or she~~) the director finds are violating (~~any provision of this chapter,~~) RCW 15.86.030 or 15.86.090 or rules (~~or regulations~~) adopted (~~under~~) pursuant to this chapter, to cease their violations and desist from future violations.

(b) Whenever the director finds that a producer, processor, or handler has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of (~~the following amounts~~):

(~~(a)~~) (i) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and

(~~(b)~~) (ii) One thousand dollars.

(~~(3)~~) The director may deny, suspend, or revoke a certification provided for in this chapter if he or she determines that an applicant or certified person has violated this chapter or rules adopted under it.)

**Sec. 5.** RCW 15.86.065 and 2002 c 220 s 7 are each amended to read as follows:

(1) The department is authorized to take such actions, conduct proceedings, and enter orders as permitted or contemplated for a state organic program or certifying agent under the (~~federal organic food production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules adopted thereunder~~) national organic program.

(2) The director may deny, suspend, or revoke a certification provided for in this chapter if the director determines that an applicant or certified person has violated this chapter or rules adopted pursuant to this chapter.

(3) The (~~state organic~~) program shall not be inconsistent with the requirements of (~~7 U.S.C. Sec. 6501 et seq. and the rules adopted thereunder, including 7 C.F.R. Sec. 205.668~~) the national organic program.

(4) The department shall adopt rules necessary to implement this section.

**Sec. 6.** RCW 15.86.070 and 2002 c 220 s 5 are each amended to read as follows:

(1) The director may adopt rules establishing a program for certifying producers, processors, and handlers as meeting state, national, or international standards for organic or transitional (~~food~~) products.

(2) The rules:

(a) May govern, but are not limited to governing:

(i) The number and scheduling of on-site visits, both announced and unannounced, by certification personnel;

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(ii) Recordkeeping requirements; and

(iii) The submission of product samples for chemical analysis(~~The rules~~); and

(b) Shall include a fee schedule that will provide for the recovery of the full cost of the (~~organic food~~) program.

(3) All fees collected under this (~~section~~) chapter shall be deposited in an account within the agricultural local fund (~~and~~), The revenue from such fees shall be used solely for carrying out the provisions of this (~~section~~) chapter, and no appropriation is required for disbursement from the fund.

(4) The director may employ such personnel as are necessary to carry out the provisions of this (~~section~~) chapter.

~~((2) The fees established under this section may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 for the fiscal year ending June 30, 2003.))~~

**Sec. 7.** RCW 15.86.090 and 2002 c 220 s 6 are each amended to read as follows:

(1) It is unlawful for any person to sell, offer for sale, or process any agricultural product within this state with an organic label unless that person is certified under this chapter by the department or a recognized organic certifying agent.

(2) Subsection (1) of this section shall not apply to:

(a) Final retailers of organic (~~food~~) products that do not process organic (~~food~~) products; or

(b) Producers who sell no more than five thousand dollars annually in value of agricultural products directly to consumers.

**NEW SECTION. Sec. 8.** A new section is added to chapter 15.86 RCW to read as follows:

(1) To be labeled, sold, or represented as transitional products, agricultural products must comply with transitional product standards specified in this chapter and rules adopted pursuant to this chapter, including no application of substances prohibited under the national organic program within one year immediately preceding harvest.

(2) A producer, processor, or handler may not represent, sell, or offer for sale any agricultural product as a transitional product if the producer, processor, or handler knows or has reason to know that the product does not comply with transitional product standards specified in this chapter or rules adopted pursuant to this chapter.

(3)(a) The department may set and collect transitional certification fees, including fees for application for transitional certification, renewal of transitional certification, inspections, and sampling. Collected fees are subject to provisions specified in RCW 15.86.070.

(b) The fee for application for transitional certification is fifty dollars per site in addition to any organic certification application fees established under this chapter. The department may increase this fee by rule as necessary to cover costs of provision of services.

(4) The department may conduct evaluations in retail establishments to verify compliance with transitional labeling and advertising requirements of this chapter, rules adopted pursuant to this chapter, and the national organic program.

**NEW SECTION. Sec. 9.** A new section is added to chapter 15.86 RCW to read as follows:

(1) The department may establish a brand name materials list of registered materials that are approved for use in organic production, processing, or handling in accordance with the national organic program or international standards. Registration of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the brand name materials list.

(2)(a) Manufacturers of materials may submit an application to the department for registration of a material on the brand name

materials list. Applications must be made on a form designated by the department, and must include:

(i) The name and address of the manufacturer;

(ii) The name and address of the manufacturer's representative making the representations in the application;

(iii) The brand name that the material is sold under;

(iv) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;

(v) The complete formula of the material, including the active and inert ingredients;

(vi) A description of the manufacturing process, including all materials used for the extraction and synthesis of the material, if appropriate;

(vii) The intended uses of the product;

(viii) The source or supplier of all ingredients;

(ix) The required fee for registration or renewal; and

(x) Any additional information required by rule.

(b) If any change to the information provided in an application occurs at any time after an application is submitted, the registrant must immediately submit corrected information to the department for review. Failure by the registrant to provide corrections to information provided in the application may result in suspension or revocation of the registration.

(c) By submitting an application for registration on the brand name materials list, the applicant expressly consents to jurisdiction of the state of Washington in all matters related to the registration.

(d) Applications for registration on the brand name materials list are governed by chapter 34.05 RCW.

(3)(a) By applying for registration on the brand name materials list, the registrant expressly grants to the department or other organic certifying agent or inspection agent approved by the national organic program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(i) Inspect the portion of the premises where the material, inputs, or ingredients are stored, produced, manufactured, packaged, or labeled;

(ii) Inspect records related to the sales, storage, production, manufacture, packaging, or labeling of the material, inputs, or ingredients; and

(iii) Obtain samples of materials, inputs, and ingredients.

(b) Should the registrant refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is cancelled. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records or fails to provide samples as provided in this section.

(c) Required inspections may be conducted by department personnel, by an organic certifying agent, or by another inspection agent approved by the national organic program. The department may establish by rule evaluation criteria for review of inspection reports conducted by an organic certifying agent or inspection agent approved by the national organic program.

(4) The director may adopt rules necessary to implement the brand name materials list, including but not limited to:

(a) Fees related to registration;

(b) The number and scheduling of inspections, both announced and unannounced;

(c) Recordkeeping requirements;

(d) Additional application requirements;

(e) Labeling of registered materials; and

(f) Chemical analysis of material samples.

(5)(a) The department may establish a brand name materials list to register materials approved for use under:

(i) National organic program standards; or

(ii) International or additional organic standards.

(b) The director may review materials registered on the brand name materials list as approved for use under the national organic program for compliance with specific international or additional organic standards as designated by rule. A registered material that complies with a specific international or additional organic standard may also be registered as approved under that standard.

(6) Registration of a material on the brand name materials list under this chapter does not guarantee acceptance for use in organic production or processing by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material registered on the brand name materials list.

(7) The director may deny, suspend, or revoke a registration on the brand name materials list if the director determines that a registrant has:

(a) Failed to meet the registration criteria established in this chapter or rules adopted pursuant to this chapter; or

(b) Violated any other provision of this chapter or rules adopted pursuant to this chapter.

**NEW SECTION. Sec. 10.** A new section is added to chapter 15.86 RCW to read as follows:

(1) The department is authorized to set and collect fees for application for registration, renewal of registration, inspections, and sampling for the brand name materials list. Collected fees are subject to provisions specified in RCW 15.86.070. The department may increase by rule fees established in this section as necessary to cover costs of provision of services.

(2)(a) The application fee for registration of a pesticide, spray adjuvant, processing aid, livestock production aid, or postharvest material is:

(i) Five hundred dollars per material for an initial registration; and

(ii) Three hundred dollars per material for renewing a registration.

(b) The application fee for registration of a fertilizer, soil amendment, organic waste-derived material, compost, animal manure, or crop production aid is:

(i) Four hundred dollars per material for an initial registration; and

(ii) Two hundred dollars per material for renewing a registration.

(3)(a) Renewal applications postmarked after October 31st must include, in addition to the renewal fee, a late fee of:

(i) One hundred dollars per material for applications postmarked after October 31st;

(ii) Two hundred dollars per material for applications postmarked after November 30th; and

(iii) Three hundred dollars per material for applications postmarked after December 31st.

(b) Renewal applications received after February 2nd will not be accepted, and applicants must reapply as new applicants.

(4) Inspections and any additional visit that must be arranged must be billed at forty dollars per hour plus travel costs and mileage, charged at the rate established by the office of financial management.

(5) Chemical analysis of material samples, if required for registration or requested by the applicant, must be billed at a rate established by the laboratory services division of the department of agriculture or at cost for analyses performed by another laboratory.

(6) Requests for expedited reviews may be submitted and, if approved, must be billed at forty dollars per hour.

(7) The department may assess compliance with an international or additional organic standard for materials registered on the brand name materials list as approved for use under the national organic program. Requests for additional assessments of

materials approved under the national organic program must be billed at a rate of one hundred dollars per product for each standard."

Senator Hatfield spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Agriculture & Rural Economic Development to House Bill No. 2460.

The motion by Senator Hatfield carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "products;" strike the remainder of the title and insert "amending RCW 15.86.010, 15.86.020, 15.86.030, 15.86.060, 15.86.065, 15.86.070, and 15.86.090; adding new sections to chapter 15.86 RCW; and prescribing penalties."

#### MOTION

On motion of Senator Hatfield, the rules were suspended, House Bill No. 2460 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hatfield spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2460 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2460 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 1; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senator Holmquist

Excused: Senators McCaslin, Pflug and Prentice

HOUSE BILL NO. 2460 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED HOUSE BILL NO. 2831, by Representatives Simpson, Bailey, Kirby, Kelley, Chase, Wallace, Rodne and Nelson

Regulating state-chartered commercial banks, trust companies, savings banks, and their holding companies.

The measure was read the second time.

#### MOTION



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On motion of Senator Berkey, the rules were suspended, Engrossed House Bill No. 2831 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2831.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2831 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yeas: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators McCaslin, Pflug and Prentice

ENGROSSED HOUSE BILL NO. 2831, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 2534, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Hurst, Pearson, O'Brien, Chase, Kelley, Conway, Van De Wege, Sells, Ericks, Morrell, Kirby, Campbell, Haigh and Smith)

Establishing a program to verify the address of registered sex offenders and kidnapping offenders.

The measure was read the second time.

#### MOTION

Senator Hargrove moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.44.130 and 2008 c 230 s 1 are each amended to read as follows:

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person

shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection:

(i) Who is attending, or planning to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW shall, within ten days of enrolling or prior to arriving at the school to attend classes, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the school, and the sheriff shall promptly notify the principal of the school;

(ii) Who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution;

(iii) Who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or

(iv) Whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at the institution.

(c) Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, or a public or private school regulated under Title 28A RCW or chapter 72.40 RCW on September 1, 2006, must notify the county sheriff immediately.

(d) The sheriff shall notify the school's principal or institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(e)(i) A principal receiving notice under this subsection must disclose the information received from the sheriff under (b) of this subsection as follows:

(A) If the student who is required to register as a sex offender is classified as a risk level II or III, the principal shall provide the information received to every teacher of any student required to register under (a) of this subsection and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record;

(B) If the student who is required to register as a sex offender is classified as a risk level I, the principal shall provide the information received only to personnel who, in the judgment of the principal, for security purposes should be aware of the student's record.

(ii) Any information received by a principal or school personnel under this subsection is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.550 upon the public safety department of any public or private school or institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) complete residential address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii)

social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) **OFFENDERS IN CUSTODY.** (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection ~~((4))~~ (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) **OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses

committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of

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social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection ~~((4+))~~ (10) of this section.

(vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection ~~((4+))~~ (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send signed written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send signed written notice of the change of

address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send signed written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. ~~((The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days.))~~ The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) ~~((All offenders who are required to register pursuant to this section who have a fixed residence and who are designated as a risk level II or III must report, in person, every ninety days to the sheriff of the county where he or she is registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. An offender who complies with the ninety day reporting requirement with no violations for a period of at least five years in the community may petition the superior court to be relieved of the duty to report every ninety days. The petition shall be made to the superior court in the county where the offender resides or reports under this section. The prosecuting attorney of the county shall be named and served as respondent in any such petition. The court shall relieve the petitioner of the duty to report~~

~~if the petitioner shows, by a preponderance of the evidence, that the petitioner has complied with the reporting requirement for a period of at least five years and that the offender has not been convicted of a criminal violation of this section for a period of at least five years, and the court determines that the reporting no longer serves a public safety purpose. Failure to report, as specified, constitutes a violation of this section and is punishable as provided in subsection (11) of this section.~~

(8)) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

((9)) (8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints. A photograph may be taken at any time to update an individual's file.

((40)) (9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

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

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection ((40)) (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection ((40)) (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

((41)) (10)(a) A person who knowingly fails to comply with any of the requirements of this section is guilty of a class B felony if

the crime for which the individual was convicted was a felony sex offense as defined in subsection ((40)) (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection ((40)) (9)(a) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

((42)) (11)(a) A person who knowingly fails to comply with any of the requirements of this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection ((40)) (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection ((40)) (9)(b) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

((43)) (12) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section.

**Sec. 2.** RCW 9A.44.135 and 2000 c 91 s 1 are each amended to read as follows:

(1) When an offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall notify the police chief or town marshal of the jurisdiction in which the offender has registered to live. If the offender registers to live in an unincorporated area of the county, the sheriff shall make reasonable attempts to verify that the offender is residing at the registered address. If the offender registers to live in an incorporated city or town, the police chief or town marshal shall make reasonable attempts to verify that the offender is residing at the registered address. Reasonable attempts ~~((at verifying an address shall include at a minimum:~~

~~(a) For offenders who have not been previously designated sexually violent predators under chapter 71.09 RCW or an equivalent procedure in another jurisdiction, each year the chief law enforcement officer of the jurisdiction where the offender is registered to live shall send)) include verifying an offender's address pursuant to the grant program established under section 3 of this act. If the sheriff or police chief or town marshal does not participate in the grant program established under section 3 of this act, reasonable attempts require a yearly mailing by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address sent by the chief law enforcement officer of the jurisdiction where the offender is registered to live. ((b)) For offenders who have been previously designated sexually violent predators under chapter 71.09 RCW or the equivalent procedure in another jurisdiction, even if the designation has subsequently been removed, this mailing must be sent every ninety days ((the county sheriff shall send by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address)).~~

((e)) The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the chief law enforcement officer of the jurisdiction where the offender is registered to live within ten days after receipt of the form.

(2) The chief law enforcement officer of the jurisdiction where the offender has registered to live shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address.

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If the offender fails to return the verification form or the offender is not at the last registered address, the chief law enforcement officer of the jurisdiction where the offender has registered to live shall promptly forward this information to the county sheriff and to the Washington state patrol for inclusion in the central registry of sex offenders.

(3) When an offender notifies the county sheriff of a change to his or her residence address pursuant to RCW 9A.44.130, and the new address is in a different law enforcement jurisdiction, the county sheriff shall notify the police chief or town marshal of the jurisdiction from which the offender has moved.

(4) County sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 36.28A RCW to read as follows:

(1) When funded, the Washington association of sheriffs and police chiefs shall administer a grant program to local governments for the purpose of verifying the address and residency of sex offenders and kidnapping offenders registered under RCW 9A.44.130 who reside within the county sheriff's jurisdiction. The Washington association of sheriffs and police chiefs shall:

(a) Enter into performance-based agreements with local governments to ensure that registered offender address and residency are verified:

- (i) For level I offenders, every twelve months;
- (ii) For level II offenders, every six months; and
- (iii) For level III offenders, every three months;

(b) Collect performance data from all participating jurisdictions sufficient to evaluate the efficiency and effectiveness of the address and residency verification program; and

(c) Submit a report on the effectiveness of the address and residency verification program to the governor and the appropriate committees of the house of representatives and senate by December 31st each year.

(2) The Washington association of sheriffs and police chiefs may retain up to three percent of the amounts provided pursuant to this section for the cost of administration. Any funds not disbursed for address and residency verification or retained for administration may be allocated to local prosecutors for the prosecution costs associated with failing to register offenses.

(3) For the purposes of this section, unclassified offenders and kidnapping offenders shall be considered at risk level I unless in the opinion of the local jurisdiction a higher classification is in the interest of public safety.

(4) County sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section."

Senator Hargrove spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Substitute House Bill No. 2534.

The motion by Senator Hargrove carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "offenders;" strike the remainder of the title and insert "amending RCW 9A.44.130 and 9A.44.135; and adding a new section to chapter 36.28A RCW."

POINT OF ORDER

Senator Hargrove: "Can Senator Hewitt take pictures of me on the floor with his camera?"

REPLY BY THE PRESIDENT

President Owen: "He has a wide angle lens. Anything else."

REMARKS BY SENATOR HARGROVE

Senator Hargrove: "You know my nickname should be Gracie. And it doesn't need to be as wide as it used to."

REPLY BY THE PRESIDENT

President Owen: "True."

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 2534 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2534 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2534 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators McCaslin, Pflug and Prentice  
 SUBSTITUTE HOUSE BILL NO. 2534 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3040, by House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Wood, Appleton, Rolfes, Sells, Sullivan and Finn)

Regarding the licensing of appraisal management companies.

The measure was read the second time.

MOTION

Senator Kohl-Welles moved that the following committee striking amendment by the Committee on Labor, Commerce & Consumer Protection be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Appraisal" means the act or process of estimating value; an estimate of value; or of pertaining to appraising and related functions.

(2) "Appraisal management company" means an entity that performs appraisal management services, regardless of the use of the term appraisal management company, mortgage technology provider, lender processing services, lender services, loan processor, mortgage services, real estate closing services provider, settlement services provider, or vendor management company, or any other term.

(3) "Appraisal management services" means to perform any or all of the following functions on behalf of a lender, financial institution, mortgage broker, loan originator, or any other person:

(a) Administer an appraiser panel;

(b) Recruit, qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel;

(c) Receive an order for an appraisal from one person, or entity, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion;

(d) Track and determine the status of appraisal orders;

(e) Conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal; and

(f) Provide a completed appraisal performed by an appraiser to one or more persons that have ordered an appraisal.

(4) "Appraisal review" or "appraisal review services" means developing and communicating an opinion about the quality of another appraiser's work that was performed, or assignment results that were developed, as part of an appraisal assignment.

(5) "Appraiser" means a person who is licensed or certified under chapter 18.140 RCW or under similar laws of another state.

(6) "Appraiser panel" means a network of appraisers who are independent contractors of an appraisal management company that have:

(a) Independently applied to or responded to an invitation, request, or solicitation from an appraisal management company to perform appraisals for persons, or entities, that have ordered appraisals through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company; and

(b) Been selected, and approved, by an appraisal management company to perform appraisals for a person, or entity, that has ordered an appraisal through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company.

(7) "Controlling person" means:

(a) An owner, officer, or director of a corporation, partnership, or other business entity seeking to offer appraisal management services in this state;

(b) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals;

(c) An individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company;

(d) Any person who controls a partnership, company, association, or corporation through one or more intermediaries,

alone or in concert with others, or a ten percent or greater interest in a partnership, company, association, or corporation; or

(e) Any person who controls a limited liability company or is the owner of a sole proprietorship.

(8) "Department" means the department of licensing.

(9) "Director" means the director of the department of licensing.

**NEW SECTION. Sec. 2. POWERS AND DUTIES OF DIRECTOR.** The director shall:

(1) Adopt rules to implement this chapter;

(2) Establish appropriate administrative procedures for the processing of the applications;

(3) Issue licenses to qualified companies under the provisions of this chapter; and

(4) Maintain a roster of the names and addresses of companies licensed under this chapter;

(5) Employ professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

(6) Establish forms necessary to administer this chapter;

(7) Oversee the performance of any background investigations;

(8) Initiate and oversee investigations and any audits;

(9) Establish grounds for disciplinary actions;

(10) Adopt fees under RCW 43.24.086; and

(11) Do all other things necessary to carry out the provisions of this chapter and comply with the requirements of any pertinent federal laws pertaining to appraisal management companies.

**NEW SECTION. Sec. 3. IMMUNITY.** The director or individuals acting on behalf of the director are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties except for their intentional or willful misconduct.

**NEW SECTION. Sec. 4. APPLICATIONS--ORIGINAL AND RENEWALS.** (1) Applications for licensure must be made to the department on forms approved by the director. A license is valid for two years and must be renewed on or before the expiration date. Applications for original and renewal licenses must include a statement confirming that the company must comply with applicable rules and that the company understands the penalties for misconduct.

(2) The appropriate fees must accompany all applications for original licensure and renewal.

(3) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as the surety may not exceed in the aggregate the penal sum of the bond. The penal sum of the bond must be a minimum of twenty-five thousand dollars. The bond must run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter.

**NEW SECTION. Sec. 5. OUT OF STATE COMPANIES--CONSENT FOR SERVICE OF PROCESS.** Every company seeking licensure whose headquarters is not based in the state of Washington shall submit, with the application for licensure, an irrevocable consent that service of process upon the controlling person or persons may be made by service on the director if, in an action against the entity in a Washington state court arising out of the entity's activities as an appraisal management company, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the company.

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**NEW SECTION. Sec. 6. LICENSURE--REQUIRED USE OF NAME AND LICENSE NUMBER.** (1) A license issued under this chapter must bear the signature or facsimile signature of the director and a license number assigned by the director.

(2) Each licensed appraisal management company shall place the name under which it does business and its license number on any appraisal engagement document issued.

**NEW SECTION. Sec. 7. LICENSURE REQUIRED.** (1) It is unlawful for an entity to engage or attempt to engage in business as an appraisal management company, to engage or attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a license issued by the department under this chapter.

(2) An application for the issuance or renewal of a license required by subsection (1) of this section must, at a minimum, include the following information:

- (a) Name of the entity seeking licensure;
- (b) Names under which the entity will do business;
- (c) Business address of the entity seeking licensure;
- (d) Phone contact information of the entity seeking licensure;
- (e) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;
- (f) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns ten percent or more of the appraisal management company;
- (g) The name, address, and contact information for a controlling person;
- (h) A certification that the entity has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company for work being done in this state holds a license or certificate in good standing under chapter 18.140 RCW;
- (i) A certification that the entity has a system in place to review the work of appraisers that are performing real estate appraisal services on a periodic basis and have a policy in place to require that the real estate appraisal services provided by the appraiser are being conducted in accordance with chapter 18.140 RCW and other applicable state and federal laws;
- (j) A certification that the entity maintains a detailed record of each service request that it receives and the appraiser that performs the real estate appraisal services under section 13 of this act;
- (k) A certification that the entity maintains a complete copy of the completed appraisal report performed as a part of any request, for a minimum period of five years, or at least two years after final disposition of any judicial proceeding related to the assignment, under uniform standards of professional appraisal practice provisions, and that the appraisals must be provided to the department upon demand;
- (l) An irrevocable uniform consent to service of process, under section 6 of this act; and
- (m) Any other relevant information reasonably required by the department to obtain a license under the requirements of this chapter.

(2) The controlling person designated under subsection (1) of this section must:

- (a) Have never had a license or certificate to act as an appraiser surrendered in lieu of disciplinary action, refused, denied, canceled, or revoked in any state;
- (b) Be of good moral character, as determined by the department; and
- (c) Submit to a background investigation under section 15 of this act.

**NEW SECTION. Sec. 9. CONTROLLING PERSON REQUIREMENTS.** (1)(a) An appraisal management company shall designate one controlling person that will be the main contact for all communication between the department and the appraisal management company.

(b) Should the controlling person change, the appraisal management company must notify the director within fourteen business days and provide the name and contact information of the new controlling person.

(2) An appraisal management company may not knowingly contract with or employ as an appraiser:

- (a) Any person who has ever had a license or certificate to act as an appraiser in this state, or in any other state, surrendered in lieu of disciplinary action, refused, denied, canceled, or revoked;
- (b) Any person who has been convicted of an offense that reflects adversely upon the person's integrity, competence, or fitness to meet the responsibilities of an appraiser or appraisal management company;
- (c) Any person who has been convicted of, or who has pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(d) Any person who is in violation of chapter 19.146 or 31.04 RCW; or

(e) Any person who is in violation of this chapter.

(2) An appraisal management company may not:

(a) Knowingly enter into any independent contractor arrangement for appraisal or appraisal review services with any person who has ever had a license or certificate to act as an appraiser in this state, or in any other state, surrendered in lieu of disciplinary action, refused, denied, canceled, or revoked; and

(b) Knowingly enter into any contract, agreement, or other business relationship for appraisal or appraisal review services with any entity that employs, has entered into an independent contractor

(2) Each person that owns more than ten percent of an appraisal management company must:

(a) Not have had a license or certificate to act as an appraiser refused, denied, canceled, or revoked in any state;

(b) Be of good moral character, as determined by the department; and

(c) Submit to a background investigation under section 15 of this act.

(3) Each appraisal management company must certify to the department that it has reviewed each and every individual or entity that owns more than ten percent of the appraisal management company and that no person or entity that owns more than ten percent of the appraisal management company is prohibited from owning an appraisal management company under this section.

(4) A person under this section may appeal an adjudicative proceeding involving a final decision of the director to deny, suspend, or revoke a license under chapter 18.235 RCW.

**NEW SECTION. Sec. 10. APPRAISER REQUIREMENTS.** (1) An appraisal management company may not knowingly contract with or employ as an appraiser:

- (a) Any person who has ever had a license or certificate to act as an appraiser in this state, or in any other state, surrendered in lieu of disciplinary action, refused, denied, canceled, or revoked;
- (b) Any person who has been convicted of an offense that reflects adversely upon the person's integrity, competence, or fitness to meet the responsibilities of an appraiser or appraisal management company;
- (c) Any person who has been convicted of, or who has pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(d) Any person who is in violation of chapter 19.146 or 31.04 RCW; or

(e) Any person who is in violation of this chapter.

(2) An appraisal management company may not:

(a) Knowingly enter into any independent contractor arrangement for appraisal or appraisal review services with any person who has ever had a license or certificate to act as an appraiser in this state, or in any other state, surrendered in lieu of disciplinary action, refused, denied, canceled, or revoked; and

(b) Knowingly enter into any contract, agreement, or other business relationship for appraisal or appraisal review services with any entity that employs, has entered into an independent contractor

arrangement, or has entered into any contract, agreement, or other business relationship with any person who has ever had a license or certificate to act as an appraiser in this state or in any other state surrendered in lieu of disciplinary action, refused, denied, canceled, or revoked.

(3) Any employee of the appraisal management company, or any contractor working in any capacity on behalf of the appraisal management company, that has any involvement in the actual performance of appraisal or appraisal review services, or review and analysis of completed appraisals must be a state licensed or state certified appraiser in the state in which the property is located, and must have geographic and product competence. This requirement does not apply to any review or examination of the appraisal for grammatical, typographical, or similar errors or general reviews of the appraisal for completeness.

**NEW SECTION. Sec. 11. EXEMPTIONS.** The provisions of this chapter do not apply to the following:

(1) A department or unit within a financial institution that is subject to direct regulation by an agency of the United States government, or to regulation by an agency of this state, that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is part of an appraiser panel; or

(2) An appraiser that enters into an agreement, whether written or otherwise, with another appraiser for the performance of an appraisal, and upon completion of the appraisal, the report of the appraiser performing the appraisal is signed by both the appraiser who completed the appraisal and the appraiser who requested the completion of the appraisal.

**NEW SECTION. Sec. 12. RECORDKEEPING.** An appraisal management company must certify to the department on initial application and upon renewal, that it maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal for the appraisal management company. This statement must also certify that the appraisal management company maintains a complete copy of the completed appraisal report, for a minimum period of five years after the appraisal is completed, or two years after final disposition of a judicial proceeding related to the assignment, whichever period expires later.

**NEW SECTION. Sec. 13. ADJUDICATION OF DISPUTES BETWEEN AN APPRAISAL MANAGEMENT COMPANY AND AN APPRAISER.** (1) Except within the first thirty days after an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without:

(a) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company, including if the appraiser is being removed from the panel for illegal conduct, a violation of state licensing standards, substandard performance, or administrative purposes. In addition, if the removal is not for administrative purposes, the nature of the alleged conduct, substandard performance, or violation must be provided; and

(b) Providing an opportunity for the appraiser to respond to the notification of the appraisal management company.

(2) An appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct or a violation of state licensing standards, may file a complaint with the department for a review of the decision of the appraisal management company, except that in no case will the department make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company

which is unrelated to the actions specified in subsection (1) of this section.

(3) If an appraiser files a complaint against an appraisal management company pursuant to subsection (2) of this section, the department may investigate the complaint within one hundred eighty days during which time the appraiser must remain removed from the panel.

(4) If after opportunity for hearing and review, the department determines that an appraiser did not commit a violation of law or a violation of state licensing standards, the department shall order that an appraiser be restored to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.

(5) Following the adjudication of a complaint to the department by an appraiser against an appraisal management company, an appraisal management company may not refuse to make assignments for real estate appraisal services to an appraiser, or reduce the number of assignments, or otherwise penalize the appraiser because of the adjudicated complaint, if the department has found that the appraisal management company acted without reasonable cause in removing the appraiser from the appraiser panel.

**NEW SECTION. Sec. 14. DISCIPLINARY ACTIONS--GROUNDS.** (1) In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action for the following:

(a) Failing to meet the minimum qualifications for licensure established under this chapter;

(b) Failing to pay appraisers no later than forty-five days after completion of the appraisal service unless otherwise agreed or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal service;

(c) Failing to pay appraisers even if the appraisal management company is not paid by its client;

(d) Coercing, extorting, colluding, compensating, inducing, intimidating, bribing an appraiser, or in any other manner including:

(i) Withholding or threatening to withhold timely payment for an appraisal;

(ii) Requiring the appraiser to remit a portion of the appraisal fee back to the appraisal management company;

(iii) Withholding or threatening to withhold future business for, or demoting or terminating or threatening to demote or terminate, an appraiser;

(iv) Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(v) Conditioning the request for an appraisal or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(vi) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

(vii) Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions must be provided to the appraiser;

(viii) Providing to an appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits;

(ix) Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant



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to a bona fide prefunding or postfunding appraisal review or quality control process; or

(x) Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality, or that violates law;

(e) Altering, modifying, or otherwise changing a completed appraisal report submitted by an appraiser;

(f) Copying and using the appraiser's signature for any purpose or in any other report;

(g) Extracting, copying, or using only a portion of the appraisal report without reference to the entire report;

(h) Prohibiting or attempting to prohibit the appraiser from including or referencing the appraisal fee, the appraisal management company name or identity, or the client's or lender's name or identity in the appraisal report;

(i) Knowingly requiring an appraiser to prepare an appraisal report, engaging an appraiser to perform an appraisal, or accepting an appraisal from an appraiser who has informed the appraisal management company that he or she does not have either the geographic competence or necessary expertise to complete the appraisal;

(j) Knowingly requiring an appraiser to prepare an appraisal report under such a limited time frame when the appraiser, in the appraiser's own professional judgment, has informed the appraisal management company that it does not afford the appraiser the ability to meet all relevant legal and professional obligations or provide a credible opinion of value for the property being appraised. This subsection (1)(j) allows an appraiser to decline an assignment, but is not a basis for complaints against the appraisal management company;

(k) Requiring, or attempting to require, an appraiser to modify an appraisal report except as permitted under subsection (2)(a) or (b) of this section;

(l) Prohibiting, or attempting to prohibit, or inhibiting legal or other allowable communication between the appraiser and:

- (i) The lender;
- (ii) A real estate licensee;
- (iii) A property owner; or

(iv) Any other party or person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant or pertinent in completing the appraisal;

(m) Knowingly requiring or attempting to require the appraiser to do anything that violates chapter 18.140 RCW or other applicable state and federal laws or with any allowable assignment conditions or certifications required by the client;

(n) Prohibiting or refusing to allow, or attempting to prohibit or refuse to allow, the transfer of an appraisal from one lender to another lender if the lenders are allowed to transfer an appraisal under applicable federal law; or

(o) Requiring an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents, employees, or independent contractors for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser.

(2) Nothing in subsection (1) of this section may be construed as prohibiting the appraisal management company from requesting that an appraiser:

(a) Provide additional information about the basis for a valuation, including whether or not the appraiser considered other sales and reasons the other sales were either not considered relevant or included in the appraisal; or

(b) Correct objective factual errors in an appraisal report.

**NEW SECTION. Sec. 15. BACKGROUND INVESTIGATIONS.** Background investigations under this chapter consist of fingerprint-based background checks through the Washington state patrol criminal identification system and through the federal bureau of investigation. The applicant is required to pay the current federal and state fees for fingerprint-based criminal history background checks. The applicant shall submit the fingerprints and required fees for the background checks to the department for submission to the Washington state patrol.

**NEW SECTION. Sec. 16. APPRAISAL MANAGEMENT COMPANY ACCOUNT.** The appraisal management company account is created in the state treasury. All fees and penalties under this chapter must be paid to the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out the provisions of this chapter. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**NEW SECTION. Sec. 17. UNIFORM REGULATION OF BUSINESS AND PROFESSIONS ACT.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**Sec. 18.** RCW 18.235.020 and 2009 c 412 s 22, 2009 c 370 s 20, and 2009 c 102 s 5 are each reenacted and amended to read as follows:

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

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

- (i) Auctioneers under chapter 18.11 RCW;
- (ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;
- (iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;
- (iv) Commercial telephone solicitors under chapter 19.158 RCW;
- (v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;
- (vi) Court reporters under chapter 18.145 RCW;
- (vii) Driver training schools and instructors under chapter 46.82 RCW;
- (viii) Employment agencies under chapter 19.31 RCW;
- (ix) For hire vehicle operators under chapter 46.72 RCW;
- (x) Limousines under chapter 46.72A RCW;
- (xi) Notaries public under chapter 42.44 RCW;
- (xii) Private investigators under chapter 18.165 RCW;
- (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
- (xiv) Real estate appraisers under chapter 18.140 RCW;
- (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
- (xvi) Security guards under chapter 18.170 RCW;
- (xvii) Sellers of travel under chapter 19.138 RCW;
- (xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW;
- (xix) Whitewater river outfitters under chapter 79A.60 RCW;
- (~~and~~)
- (xx) Home inspectors under chapter 18.280 RCW; (~~and~~)

(xxi) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW; and

(xxii) Appraisal management companies under chapter 18.-- RCW (the new chapter created in section 20 of this act).

(b) The boards and commissions having authority under this chapter are as follows:

(i) The state board of registration for architects established in chapter 18.08 RCW;

(ii) The Washington state collection agency board established in chapter 19.16 RCW;

(iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(v) The state board of licensure for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority.

**NEW SECTION. Sec. 19. 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. 20.** Sections 1 through 17 and 19 of this act constitute a new chapter in Title 18 RCW.

**NEW SECTION. Sec. 21.** This act takes effect July 1, 2011."

Senator Kohl-Welles spoke in favor of adoption of the committee striking amendment.

#### MOTION

Senator Kohl-Welles moved that the following amendment by Senators Kohl-Welles and King to the committee striking amendment be adopted:

On page 13, at the beginning of line 12 of the amendment, strike "Moneys in the account may be spent only after appropriation."

Senator Kohl-Welles spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Kohl-Welles and King on page 13, line 12 to the committee striking amendment to Engrossed Substitute House Bill No. 3040.

The motion by Senator Kohl-Welles carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor, Commerce & Consumer Protection as amended to Engrossed Substitute House Bill No. 3040.

The motion by Senator Kohl-Welles carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "companies;" strike the remainder of the title and insert "reenacting and amending RCW 18.235.020; adding a new chapter to Title 18 RCW; and providing an effective date."

#### MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Substitute House Bill No. 3040 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 3040 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 3040 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Holmquist and Stevens

Excused: Senators McCaslin and Pflug

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3040 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

At 5:02 p.m., on motion of Senator Eide, the Senate was recessed until 6:30 p.m.

#### EVENING SESSION

The Senate was called to order at 6:30 p.m. by President Owen.

#### PARLIAMENTARY INQUIRY

Senator McDermott: "What order of business are we in at present?"

#### REPLY BY THE PRESIDENT

President Owen: "We are presently in the sixth order of business. If you asked me what we're doing that would have a whole different answer."

#### SECOND READING CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

FIFTY SECOND DAY, MARCH 3, 2010

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MOTION

Senator Gordon moved that Gubernatorial Appointment No. 9181, Paul Chiles, as a member of the Board of Trustees, Bellevue Community College District No. 8, be confirmed.

Senator Gordon spoke in favor of the motion.

MOTION

On motion of Senator Honeyford, Senators Brandland, Carrell, Parlette, Pflug and Stevens were excused.

MOTION

On motion of Senator Marr, Senators Brown and Kauffman were excused.

APPOINTMENT OF PAUL CHILES

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9181, Paul Chiles as a member of the Board of Trustees, Bellevue Community College District No. 8.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9181, Paul Chiles as a member of the Board of Trustees, Bellevue Community College District No. 8 and the appointment was confirmed by the following vote: Yeas, 41; Nays, 0; Absent, 1; Excused, 7.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McDermott, Morton, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Absent: Senator McAuliffe

Excused: Senators Brown, Carrell, Kauffman, McCaslin, Parlette, Pflug and Stevens

Gubernatorial Appointment No. 9181, Paul Chiles, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Bellevue Community College District No. 8.

SECOND READING

CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Ranker moved that Gubernatorial Appointment No. 9205, Sarah Ishmael, as a member of the Board of Trustees, Western Washington University, be confirmed.

Senator Ranker spoke in favor of the motion.

APPOINTMENT OF SARAH ISHMAEL

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9205, Sarah Ishmael as a member of the Board of Trustees, Western Washington University.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9205, Sarah Ishmael as a member of the Board of Trustees, Western Washington

University and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Brown, Kauffman, McCaslin and Pflug

Gubernatorial Appointment No. 9205, Sarah Ishmael, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Western Washington University.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2541, by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Takko, Orcutt, Kessler, Kretz and Blake)

Maintaining a base of forest lands that may be used for commercial forestry. Revised for 1st Substitute: Promoting and fostering the success of the forest products industry. (REVISED FOR ENGROSSED: Promoting the economic success of the forest products industry. )

The measure was read the second time.

MOTION

Senator Jacobsen moved that the following committee striking amendment by the Committee on Natural Resources, Ocean & Recreation be adopted:

strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that sustainably managed commercial forestry produces jobs and revenue while also providing clean water, clean air, renewable energy, wildlife habitat, open space, and carbon storage, among other ecological values. For these reasons, maintaining a base of forest lands that may be utilized for sustainably managed commercial forestry is of utmost importance to the state.

(2) The legislature finds that the promotion and fostering of the economic success of the forest products industry with the goal of keeping sustainably managed forestry as a priority land use, and helping to secure the timber managing, growing, harvesting, transporting, and manufacturing jobs is made possible by a vibrant working forest land base.

(3) The legislature further finds that maintaining sustainable working forests is important for the quality of life of all Washingtonians, and that sustainable forest practices can help to maintain and restore the vitality of Washington's communities while also helping to preserve Washington's natural landscapes and ecosystems.

(4) The legislature further finds that it is necessary to assist landowners in gaining access to additional sources of revenue, such as emerging ecosystem services markets, and to help landowners diversify their incomes, improve the ecological functions of their lands, and pass their lands and the lands' associated benefits to future generations.

(5) The legislature further finds that the conservation and restoration of forest ecosystems provide services to the residents of

the state that help improve water and habitat quality, help avoid carbon emissions, help address impacts associated with climate change, and help natural resources adapt to these impacts.

(6) The legislature further finds that ecosystem services markets can lead to efficient, innovative, and effective conservation and restoration actions and facilitate improved integration of public and private investment.

(7) Therefore, it is the intent of the legislature to develop tools to facilitate small and industrial forest landowners' access to market capital from existing and emerging ecosystem services markets.

(8) The legislature further intends to enable forest landowners who provide ecosystem services access to financing to protect, restore, and maintain the ecological values provided by protection of public resources.

**NEW SECTION. Sec. 2.** A new section is added to chapter 76.44 RCW to read as follows:

The legislature finds that there are many issues facing the forest sector, such as climate change, forest health and fire, carbon accounting, habitat and diversity, timber and water supplies, economic competitiveness, and the economic health of forest dependent communities. Enhancing the capability to effectively address these forest issues is critical to the state of Washington. To meet this need, the University of Washington school of forest resources will continue to work with the various interests concerned with the state's forest resources, including the legislature, state and federal governments, environmental organizations, local communities, the timber industry, and tribes, to improve these entities' ability to competitively recruit, educate, and train a high quality workforce.

**Sec. 3.** RCW 76.09.010 and 1999 sp.s. c 4 s 901 are each amended to read as follows:

(1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive statewide system of laws and forest practices rules which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such rules;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations;

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state; ~~((and))~~

(j) Develop a watershed analysis system that addresses the cumulative effect of forest practices on, at a minimum, the public resources of fish, water, and public capital improvements of the state and its political subdivisions; and

(k) Assist forest landowners in accessing market capital and financing for the ecosystem services provided to the public as a result of the protection of public resources.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.

(4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practices permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources.

**Sec. 4.** RCW 76.09.040 and 2009 c 246 s 1 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

~~((a))~~ (i) Establish minimum standards for forest practices;

~~((b))~~ (ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

~~((c))~~ (iii) Set forth necessary administrative provisions;

~~((d))~~ (iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

~~((e))~~ (v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection.

(ii) After the expiration of ~~((such))~~ the thirty day period, the board and the department of ecology shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. ~~((At such hearing(s)))~~ Any county representative may propose specific forest practices rules relating to problems existing within ~~((such))~~ the county at the hearings.

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(iii) The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

~~((a))~~ (i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

~~((b))~~ (ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

~~((c))~~ (b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

~~((d))~~ (c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

~~((e))~~ (d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

NEW SECTION. **Sec. 5.** (1) The department of natural resources shall, to the degree that resources are available, develop, consistent with this section, proposals for the development of appropriate landowner conservation incentives that support forest landowners maintaining their land in forestry. These incentives may include, but are not limited to, incentives that are related to ecosystem service markets, tax incentives, easements, technical assistance, and recognition or certification.

(2) The department of natural resources shall consult with the forest practices board, representatives of federal, state, and local government, Indian tribes, small forest landowners, conservation groups, industrial foresters, and other individuals deemed beneficial by the department in implementing this section.

(3) By December 31, 2011, the department of natural resources must present their research and any proposed incentives to the governor, the appropriate committees of the legislature, the commissioner of public lands, and the forest practices board. The department of natural resources shall also offer to present their findings and recommendations to the Washington congressional delegation, local governments, and any state or federal agency that has as a portion of their mission the support of Washington's working land base and the jobs, products, and ecological values that working lands provide.

(4) Neither the activities nor outcome of the department of natural resources' actions or decisions under this section shall cause, promote, or delay rule making by the forest practices board in the execution of its applicable duties.

(5) The department of natural resources is authorized to seek federal and private funds, and in-kind contributions to complete the work in this act. At the discretion of the department of natural resources, the department must comply with this act only to the degree that existing or acquired nonstate resources permit.

(6) This section expires July 1, 2012.

**Sec. 6.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 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) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

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

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadeae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dummi*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

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

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Department" means the department of natural resources.

(10) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(11) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(12) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(13) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(14) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(15) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(16) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

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

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

(19) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

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

(21) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

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

(23) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(24) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

(26) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

(27) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets."

Senator Jacobsen spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Natural Resources, Ocean & Recreation to Engrossed Substitute House Bill No. 2541.

The motion by Senator Jacobsen carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "industry;" strike the remainder of the title and insert "amending RCW 76.09.010 and 76.09.040; reenacting and amending RCW 76.09.020; adding a new section to chapter 76.44 RCW; creating new sections; and providing an expiration date."

#### MOTION

On motion of Senator Regala, Senator Murray was excused.

#### MOTION

On motion of Senator Jacobsen, the rules were suspended, Engrossed Substitute House Bill No. 2541 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Morton spoke in favor of passage of the bill.

#### MOTION

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On motion of Senator Marr, Senator Brown was excused.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2541 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2541 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 0; Excused, 4.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Oemig, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Excused: Senators Brown, McCaslin, Murray and Pflug

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2541 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2962, by House Committee on Local Government & Housing (originally sponsored by Representatives Probst and Hunter)

Allowing county treasurers to use electronic bill presentment and payment that includes an automatic electronic payment option for property taxes.

The measure was read the second time.

MOTION

Senator Swecker moved that the following amendment by Senator Swecker be adopted:

On page 3, line 32, after "agreement", strike "that may include prepayment collection charges"

On page 4, beginning on line 4, strike all of subsection (d).

Renumber the sections consecutively and correct any internal references accordingly.

Senator Swecker spoke in favor of adoption of the amendment.

Senator Pridemore spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Swecker on page 3, line 32 to Substitute House Bill No. 2962.

The motion by Senator Swecker failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Pridemore, the rules were suspended, Substitute House Bill No. 2962 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Pridemore, Fairley and Roach spoke in favor of passage of the bill.

Senator Swecker spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2962.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2962 and the bill passed the Senate by the following vote: Yeas, 35; Nays, 12; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Berkey, Brown, Delvin, Eide, Fairley, Franklin, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin, Tom and Zarelli

Voting nay: Senators Benton, Brandland, Carrell, Fraser, Holmquist, King, Morton, Parlette, Schoesler, Sheldon, Stevens and Swecker

Excused: Senators McCaslin and Pflug

SUBSTITUTE HOUSE BILL NO. 2962, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2986, by House Committee on Local Government & Housing (originally sponsored by Representatives Simpson, Upthegrove, Campbell, Carlyle, Liias, Driscoll, Williams, Ormsby, Sullivan, Nelson, Sells, Appleton, Chase, Seaquist, Ericks, Goodman, Morrell, Green, Dickerson, Hudgins, Van De Wege, White, Maxwell, Miloscia, Conway, Moeller, Jacks, Hurst, Kenney and Hasegawa)

Requiring the appointment of nonvoting labor members to public transportation governing bodies.

The measure was read the second time.

MOTION

Senator McDermott moved that the following committee amendment by the Committee on Government Operations & Elections be adopted:

On page 2, line 27, after "representing" strike all material through "of"

On page 2, line 28, after "system." insert "If the public transportation employees are represented by more than one labor organization, all such labor organizations shall select the nonvoting member by majority vote."

On page 3, line 20, after "representing" strike all material through "of"

On page 3, beginning on line 21, after "authority." strike all material through "authority." on line 22 and insert "If the public transportation employees are represented by more than one labor organization, all such labor organizations shall select the nonvoting member by majority vote."

On page 4, line 31, after "representing" strike all material through "of"

On page 4, line 32, after "system." insert "If the public transportation employees are represented by more than one labor organization, all such labor organizations shall select the nonvoting member by majority vote."

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Government Operations & Elections to Engrossed Substitute House Bill No. 2986.

The motion by Senator McDermott carried and the committee amendment was adopted by voice vote.

#### MOTION

Senator Shin moved that the following amendment by Senator Shin be adopted:

On page 2, line 26, after "member" strike "is" and insert "must be an employee of the local public transportation system, and must be"

On page 3, line 19, after "individual" insert "employed by the county transportation authority and"

On page 4, line 30, after "member" strike "is" and insert "must be an employee of the local public transportation system, and must be"

Senator Shin spoke in favor of adoption of the amendment.

Senators Marr and Jacobsen spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Shin on page 2, line 26 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Shin failed and the amendment was not adopted by voice vote.

#### MOTION

Senator Becker moved that the following amendment by Senator Becker be adopted:

On page 2, line 26, after "member" strike "is" and insert "may not be an elected union official, and must be"

On page 3, line 21, after "authority" insert ", but may not be an elected union official"

On page 4, line 30, after "member" strike "is" and insert "may not be an elected union official, and must be"

Senator Becker spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Becker on page 2, line 26 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Becker failed and the amendment was not adopted by voice vote.

#### MOTION

Senator Delvin moved that the following amendment by Senator Delvin be adopted:

On page 2, line 26, after "is ", strike all material through "representing the" on line 27, and insert "elected by a".

On page 3, line 19, after "individual ", strike all material through "representing the" on line 20, and insert "is elected by a".

On page 4, line 30, after "is ", strike all material through "representing the" on line 31, and insert "elected by a".

Senator Delvin spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Delvin on page 2, line 26 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Delvin failed and the amendment was not adopted by voice vote.

#### MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford be adopted:

On page 2, line 26, after "commission" insert ", except for a metropolitan transit commission located within a rural county. As used in this subsection, "rural county" means a county smaller than two hundred twenty-five square miles or as defined in RCW 82.14.370"

On page 3, line 27, after "session." insert "However, the requirements of this subsection do not apply to a county transportation authority located within a rural county. As used in this subsection, "rural county" means a county smaller than two hundred twenty-five square miles or as defined in RCW 82.14.370."

On page 4, line 30, after "authority" insert ", except for a public transportation benefit area authority located within a rural county. As used in this section, "rural county" means a county smaller than two hundred twenty-five square miles or as defined in RCW 82.14.370"

Senator Honeyford spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

#### REMARKS BY THE PRESIDENT

President Owen: "Speak for yourself, Senator."

Senator Marr: "Excuse me, Mr. President. I was speaking for myself in that case."

Senator Marr continued to speak against adoption of the amendment.

President Owen: "Senator Schoesler. Defend us brother."

#### MOTION

Senator Schoesler moved that the comments by the gentleman from the 6<sup>th</sup> Legislative District be spread upon the journal.

Senator Sheldon spoke in favor of adoption of the amendment.

#### PARLIAMENTARY INQUIRY

Senator Jacobsen: "The member that spoke previously made a motion. Are we suppose to ... don't we have to take action on it?"

#### REPLY BY THE PRESIDENT

President Owen: "Certainly, if you want to."

Senator Jacobsen: "I know 'size does not matter' but I think it's important to get this spread on the record because the record can be awful boring a lot of the time."

The President declared the question before the Senate to be the motion by Senator Schoesler that the comment by Senator Marr be spread upon the journal.

The motion by Senator Schoesler did not carry and the remarks by Senator Marr were not spread upon the journal by voice vote.

#### POINT OF ORDER

Senator Marr: "Mr. President, I believe we're speaking to amendment number 237 not the underlying striker or bill, substitute bill. I believe the remarks of the speaker are intended to be addressed towards the underlying bill."



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## REPLY BY THE PRESIDENT

President Owen: "Senator Sheldon, please make sure that your remarks are consistent with the amendment."

Senator Haugen spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 2, line 26 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Honeyford failed and the amendment was not adopted by a rising vote.

## MOTION

Senator King moved that the following amendment by Senator King be adopted:

On page 2, line 28, after "system." insert "The metropolitan transit commission shall not be liable in any action arising out of statements or actions by a nonvoting member."

On page 3, line 22, after "authority." insert "The county transportation authority shall not be liable in any action arising out of statements or actions by a nonvoting member."

On page 4, line 32, after "system." insert "The public transportation benefit area authority shall not be liable in any action arising out of statements or actions by a nonvoting member."

Senator King spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 2, line 28 to Engrossed Substitute House Bill No. 2986.

The motion by Senator King failed and the amendment was not adopted by voice vote.

## MOTION

Senator Holmquist moved that the following amendment by Senator Holmquist be adopted:

On page 2, line 29, after "years." insert "The nonvoting member shall comply with all governing bylaws and policies of the commission."

On page 3, line 22, after "authority." insert "The nonvoting member shall comply with all governing bylaws and policies of the authority."

On page 4, line 32, after "system." insert "The nonvoting member shall comply with all governing bylaws and policies of the authority."

Senators Holmquist and Schoesler spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Holmquist on page 2, line 29 to Engrossed Substitute House Bill No. 2986.

## ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Holmquist and the amendment was

adopted by the following vote: Yeas, 41; Nays, 6; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Gordon, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Marr, McAuliffe, Morton, Murray, Oemig, Parlette, Pridemore, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Fraser, Jacobsen, Kohl-Welles, McDermott, Prentice and Ranker

Excused: Senators McCaslin and Pflug

## MOTION

Senator Swecker moved that the following amendment by Senator Swecker be adopted:

On page 2, line 29, after "term of" strike "four" and insert "two"

On page 3, line 22, after "authority." insert "The nonvoting member is appointed for a term of two years."

On page 4, line 32, after "system." insert "The nonvoting member is appointed for a term of two years."

Senator Swecker spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Swecker on page 2, line 29 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Swecker failed and the amendment was not adopted by voice vote.

## WITHDRAWAL OF AMENDMENT

On motion of Senator Haugen, the amendment by Senator Haugen on page 2, line 31 to Engrossed Substitute House Bill No. 2986 was withdrawn.

## MOTION

Senator Benton moved that the following amendment by Senator Haugen be adopted:

On page 2, beginning on line 31, after "session" strike all material through "session" on line 33

On page 3, beginning on line 24, after "session" strike all material through "session" on line 27

On page 4, beginning on line 34, after "session" strike all material through "session" on line 37

Senator Benton spoke in favor of adoption of the amendment.

Senators Marr and McDermott spoke against adoption of the amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Haugen on page 2, line 31 to Engrossed Substitute House Bill No. 2986.

The Secretary called the roll on the adoption of the amendment by Senator Haugen and the amendment was not adopted by the following vote: Yeas, 19; Nays, 27; Absent, 1; Excused, 2.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Hatfield, Haugen, Hewitt, Holmquist, Honeyford, King,

Morton, Parlette, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Absent: Senator Hargrove

Excused: Senators McCaslin and Pflug

#### MOTION

On motion of Senator Eide, Senator Hargrove was excused.

#### MOTION

Senator Zarelli moved that the following amendment by Senator Zarelli be adopted:

On page 2, line 33, after "session." insert "The nonvoting member will not be reimbursed for travel or expenses associated with attending commission meetings."

On page 3, line 27, after "session." insert "The nonvoting member will not be reimbursed for travel or expenses associated with attending authority meetings."

On page 4, line 37, after "session." insert "The nonvoting member will not be reimbursed for travel or expenses associated with attending authority meetings."

#### WITHDRAWAL OF AMENDMENT

On motion of Senator Zarelli, the amendment by Senator Zarelli on page 2, line 33 to Engrossed Substitute House Bill No. 2986 was withdrawn.

#### MOTION

Senator King moved that the following amendment by Senator King be adopted:

On page 2, line 33, after "session." Insert the following:

"The requirement that a nonvoting member be appointed to the governing body of a metropolitan transit commission does not apply to a commission that has a labor management committee that meets at least six times a year."

On page 2, line 27, after "session." Insert the following:

"The requirement that a nonvoting member be appointed to the governing body of a county transportation authority does not apply to an authority that has a labor management committee that meets at least six times a year."

On page 5, beginning on line 2, after "to" strike all material through "union" on line 3 and insert ":

(1) An authority that has no employees represented by a labor union; or

(2) An authority that has a labor management committee that meets at least six times a year."

Reorder the sections consecutively and correct any internal references accordingly.

Senator King spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 2, line 33 to Engrossed Substitute House Bill No. 2986.

The motion by Senator King failed and the amendment was not adopted by a rising vote.

#### MOTION

Senator Haugen moved that the following amendment by Senator Haugen be adopted:

On page 2, line 33, after "session." insert "The requirement that a nonvoting member be appointed to the governing body of a metropolitan transit commission does not apply to a commission that has no employees represented by a labor union."

On page 3, line 27, after "session." insert ". The requirement that a nonvoting member be appointed to the governing body of a county transportation authority does not apply to an authority that has no employees represented by a labor union"

#### WITHDRAWAL OF AMENDMENT

On motion of Senator Haugen, the amendment by Senator Haugen on page 2, line 33 to Engrossed Substitute House Bill No. 2986 was withdrawn.

#### MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford be adopted:

On page 6, after line 5, insert the following:

"**Sec. 4.** RCW 81.112.040 and 1994 c 109 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the regional transit authority shall be governed by a board consisting of representatives appointed by the county executive and confirmed by the council or other legislative authority of each member county. Membership shall be based on population from that portion of each county which lies within the service area. Board members shall be appointed initially on the basis of one for each one hundred forty-five thousand population within the county. Such appointments shall be made following consultation with city and town jurisdictions within the service area. In addition, the secretary of transportation or the secretary's designee shall serve as a member of the board and may have voting status with approval of a majority of the other members of the board. Only board members, not including alternates or designees, may cast votes.

Each member of the board, except the secretary of transportation or the secretary's designee, shall be:

(a) An elected official who serves on the legislative authority of a city or as mayor of a city within the boundaries of the authority;

(b) On the legislative authority of the county, if fifty percent of the population of the legislative official's district is within the authority boundaries; or

(c) A county executive from a member county within the authority boundaries.

When making appointments, each county executive shall ensure that representation on the board includes an elected city official representing the largest city in each county and assures proportional representation from other cities, and representation from unincorporated areas of each county within the service area. At least one-half of all appointees from each county shall serve on the governing authority of a public transportation system.

Members appointed from each county shall serve staggered four-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated.

The governing board shall be reconstituted, with regard to the number of representatives from each county, on a population basis, using the official office of financial management population estimates, five years after its initial formation and, at minimum, in the year following each official federal census. The board membership may be reduced, maintained, or expanded to reflect population changes but under no circumstances may the board membership exceed twenty-five.

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(2) There is one nonvoting member of the regional transit authority board. The nonvoting member is recommended by the labor organization representing the majority of the public transportation employees within the regional transit authority. The nonvoting member is appointed for a term of four years. The chair or cochair of the board shall exclude the nonvoting member from attending any executive session held for the purpose of discussing negotiations with labor organizations. The chair or cochair may exclude the nonvoting member from attending any other executive session.

~~((2))~~ (3) Major decisions of the authority shall require a favorable vote of two-thirds of the entire membership of the voting members. "Major decisions" include at least the following: System plan adoption and amendment; system phasing decisions; annual budget adoption; authorization of annexations; modification of board composition; and executive director employment.

~~((3))~~ (4) Each member of the board is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation as provided in RCW 43.03.250."

On page 1, line 3 of the title, after "36.57.030," strike "and 36.57A.050" and insert "36.57A.050, and 81.112.040"

Senator Honeyford spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 6, after line 5 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Honeyford failed and the amendment was not adopted by voice vote.

#### MOTION

Senator Swecker moved that the following amendment by Senators Swecker and Haugen be adopted:

On page 6, after line 5, insert the following:

**"NEW SECTION. Sec. 4.** A new section is added to chapter 36.56 RCW to read as follows:

If a county has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under this chapter and is operating a public transportation system, then the governance of the public transportation system must include one nonvoting member. The nonvoting member is recommended by the labor organization representing the majority of the public transportation employees within the public transportation system. The nonvoting member is appointed for a term of four years. The nonvoting member may be excluded from attending any executive session held for the purpose of discussing negotiations with labor organizations or from attending any other executive session."

On page 1, line 2 of the title, after "bodies;" strike "and"

On page 1, line 3 of the title, after "36.57A.050" insert "; and adding a new section to chapter 36.56 RCW"

Senator Swecker spoke in favor of adoption of the amendment.

Senator Marr spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Swecker and Haugen on page 6, after line 5 to Engrossed Substitute House Bill No. 2986.

The motion by Senator Swecker failed and the amendment was not adopted by voice vote.

#### MOTION

On motion of Senator McDermott, the rules were suspended, Engrossed Substitute House Bill No. 2986 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McDermott, Kline, Marr and Jacobsen spoke in favor of passage of the bill.

Senators Haugen, King and Sheldon spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2986 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2986 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 28; Nays, 19; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hobbs, Jacobsen, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Berkey, Brandland, Carrell, Delvin, Hatfield, Haugen, Hewitt, Holmquist, Honeyford, Kastama, King, Morton, Parlette, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Excused: Senators McCaslin and Pflug

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2986 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3141, by House Committee on Ways & Means (originally sponsored by Representatives Kagi, Pettigrew, Seaquist, Kenney and Ormsby)

Redesigning the delivery of temporary assistance to needy families. Revised for 2nd Substitute: Regarding delivery of temporary assistance to needy families.

The measure was read the second time.

#### MOTION

Senator Regala moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 74.08A RCW to read as follows:

(1) The legislature finds that the goal of the Washington WorkFirst program is economic self-sufficiency for families through unsubsidized work. The legislature also finds that matching available resources with families' needs and developing a comprehensive plan assists families in attaining lasting self-sufficiency through work.

(2) The legislature also finds that the primary purposes of the temporary assistance for needy families program are: (a) To help job ready participants secure gainful employment; (b) to assist

parents to prepare for and obtain sustainable employment that will lift the family out of poverty and lead to economic self-sufficiency; and (c) to provide basic income assistance and support to parents who are disabled or otherwise exempt from work activity requirements under federal law.

(3) The legislature further finds that parents who have adequate job skills and experiences should be referred to job search activities that will lead to employment.

(4) The legislature also finds that completion of appropriate educational and training programs is necessary for some families to achieve economic self-sufficiency through work because research demonstrates that without adequate levels of education or training, job search activities alone have no measurable impact on a family's ability to obtain and maintain paid work.

(5) The legislature further finds that while many families have been successful in permanently leaving the program of temporary assistance for needy families, statistics indicate that families continue to return to the program in the absence of adequate education and training.

(6) In order to provide work opportunities for parents with significant barriers to employment, the legislature intends to build upon the successes of the community jobs program and to provide subsidized work opportunities to parents who are unable to find employment after earnest efforts at job search or education and training activities.

(7) The legislature intends to reform components of Washington's subsidized childcare program by redesigning the eligibility determination process to promote: (a) Stability for children and (b) predictability for parents who are either working or preparing and searching for work and the childcare providers who are serving low-income families.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.215 RCW to read as follows:

(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. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined in RCW 74.08A.410 and the standards established in this section intended to promote continuity of care for children.

(2) Beginning in fiscal year 2011, for families with children enrolled in an early childhood education and assistance program, a head start program, or an early head start program, authorizations for the working connections child care subsidy shall be effective for twelve months unless a change in circumstances necessitates reauthorization sooner than twelve months.

(3) The department, in consultation with the department of social and health services, shall report to the legislature by September 1, 2011, with:

(a) An analysis of the impact of the twelve-month authorization period on the stability of child care, program costs, and administrative savings; and

(b) Recommendations for expanding the application of the twelve-month authorization period to additional populations of children in care.

**NEW SECTION. Sec. 3.** A new section is added to chapter 74.08A RCW to read as follows:

The Washington WorkFirst subcabinet, in consultation with the governor, shall:

(1) Reevaluate the structure and policies of the WorkFirst program in the context of legislative intent expressed in section 1 of this act, and in consideration of the relevant research relating to family economic self-sufficiency and the completion of training and education programs shown to be correlated with increased earnings and career growth;

(2) Develop a proposal for redesigning the state's use of temporary assistance for needy families funds in a manner that makes optimum use of all funds available in the state to promote more families moving out of poverty to sustainable self-sufficiency. The subcabinet must report the proposal to the appropriate committees of the legislature by December 1, 2010. The proposal must include the following elements:

(a) A process for conducting a reassessment for persons who have been unable to achieve sustainable self-sufficiency through employment after receiving WorkFirst assistance for fifty-four months. The reassessment must be designed to determine if referral to community jobs or other services, including education and training opportunities, is appropriate or necessary to assist the person in attaining self-sufficiency for the family;

(b) A plan for referring persons who have been unsuccessful in finding sustainable employment to the community jobs program or other wage-subsidized employment program established under RCW 74.08A.320. Referrals should complement other activities that might be identified in a reassessment under (a) of this subsection; and

(c) A schedule for the development and implementation of three pathways to family self-sufficiency that will guide case management and engage parents early in developing a comprehensive plan to achieve self-sufficiency while addressing families' current basic needs. The pathways must address appropriate referrals for:

(i) Persons who have: (A) Marketable job skills, adequate education, or experience and attachment to the job force, (B) transportation, (C) safe child care arrangements in place, and (D) no unaddressed barriers to employment;

(ii) Persons who have: (A) Few or no marketable job skills, (B) little experience or attachment to the job force, (C) no high school diploma or equivalent, or (D) a need to complete adult basic education or other activities to remove barriers to employment; and

(iii) Persons who are: (A) Incapacitated and unemployable, (B) caring for a child with a disability, or (C) the primary caregiver for a family member with a disability; and

(3)(a) Adopt the goal of increasing the percentage of households receiving temporary assistance for needy families that move into the middle-income bracket or higher, and delineate specific program strategies within the proposal required in subsection (2) of this section to reach that goal.

(b) The proposal developed under subsection (2) of this section shall also include an estimate by the office of financial management, in consultation with other state agencies, of the percentage of Washington residents with incomes in the middle-income bracket or higher, and the percentage of WorkFirst clients who have historically moved into the middle-income bracket or higher. The office of financial management shall continue, by December 1 of every year thereafter, to estimate and report the percentage of Washington residents with incomes in the middle-income bracket or higher to the governor and the appropriate committees of the legislature.

(c) For purposes of this section, "middle-income bracket" means family incomes between two hundred and five hundred percent of the 2009 federal poverty level, as determined by the United States department of health and human services for a family of four, adjusted annually for inflation.

**Sec. 4.** RCW 74.08A.285 and 2003 c 383 s 3 are each amended to read as follows:

The WorkFirst program operated by the department to meet the federal work requirements specified in P.L. 104-193 shall contain a job search component. The component shall consist of instruction on how to secure a job and assisted job search activities to locate and retain employment. Nonexempt recipients of temporary assistance for needy families shall participate in an initial job search for no

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more than twelve consecutive weeks, when appropriate, given the recipient's marketable job skills, attachment to the labor force, and level of education or training. Each recipient shall receive a work skills assessment upon referral to the job search program. The work skills assessment shall include but not be limited to education, employment history, employment strengths, and job skills. The recipient's ability to obtain employment will be reviewed periodically thereafter and, if it is clear at any time that further participation in a job search will not be productive, the department shall assess the recipient pursuant to RCW 74.08A.260. The department shall refer recipients unable to find employment through the initial job search period to ((work)) activities that will develop their skills or knowledge to make them more employable, including additional job search and job readiness assistance.

**Sec. 5.** RCW 74.08A.320 and 1997 c 58 s 325 are each amended to read as follows:

The department shall establish a wage subsidy program to be known as the community jobs program for recipients of temporary assistance for needy families who have barriers to employment, lack experience and attachment to the job force, or have been unsuccessful in securing employment leading to family self-sufficiency. The department shall give preference in job placements to private sector employers that have agreed to participate in the wage subsidy program. The department shall identify characteristics of employers who can meet the employment goals stated in RCW 74.08A.410. The department shall use these characteristics in identifying which employers may participate in the program. The department shall adopt rules for the participation of recipients of temporary assistance for needy families in the wage subsidy program. Participants in the program established under this section may not be employed if: (1) The employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. Employers providing positions created under this section shall meet the requirements of chapter 49.46 RCW. This section shall not diminish or result in the infringement of obligations or rights under chapters 41.06, 41.56, and 49.36 RCW and the national labor relations act, 29 U.S.C. Ch. 7. The department shall establish such local and statewide advisory boards, including business and labor representatives, as it deems appropriate to assist in the implementation of the wage subsidy program. Once the recipient is hired, the wage subsidy shall be authorized for up to nine months.

**NEW SECTION. Sec. 6.** RCW 74.08A.200 (Intent--Washington WorkFirst) and 1997 c 58 s 301 are each repealed.

**NEW SECTION. Sec. 7.** It is the intent of the legislature that this act be implemented within the funding appropriated in the 2009-11 biennial budget. No additional appropriations will be provided for its implementation."

Senator Regala spoke in favor of adoption of the committee striking amendment.

#### MOTION

Senator Roach moved that the following amendment by Senator Roach to the committee striking amendment be adopted:

Beginning on page 1, line 3 of the amendment, strike all of section 1

Re-number the remaining sections consecutively and correct any internal references accordingly.

On page 3, beginning on line 5 of the amendment, after "program" strike all material through "and" on line 7

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On page 6, beginning on line 4 of the amendment, strike all of section 6

Re-number the remaining section consecutively.

On page 6, line 12 of the title amendment, after "adding" strike "new sections" and insert "a new section"

On page 6, line 13 of the title amendment, after "RCW;" insert "and"

On page 6, line 13 of the title amendment, after "section" strike "; and repealing RCW 74.08A.200"

Senator Roach spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Regala spoke against adoption of the amendment to the committee striking amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

Senators Schoesler and Stevens spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Roach on page 1, line 3 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3141.

#### ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Roach and the amendment was not adopted by the following vote: Yeas, 22; Nays, 25; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, Kauffman, Kilmer, King, Marr, Morton, Parlette, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Voting nay: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Jacobsen, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Excused: Senators McCaslin and Pflug

#### MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted:

Beginning on page 4, line 28 of the amendment, strike all of section 4

Re-number the remaining sections consecutively and correct any internal references accordingly.

On page 6, line 11 of the title amendment, after "amending RCW" strike "74.08A.285 and"

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Regala spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 4, line 28 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3141.

The motion by Senator Honeyford failed and the amendment to the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Benton moved that the following amendment by Senator Benton to the committee striking amendment be adopted:

On page 6, after line 9 of the amendment, insert the following:

"**Sec. 8.** RCW 74.08A.010 and 2004 c 54 s 4 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 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 refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of ~~((community, trade, and economic development))~~ commerce, or the crime victims' compensation program of the department of labor and industries.

(4) The department may exempt a recipient and the recipient's family from the application of subsection (1) of this section by reason of hardship ~~((or if))~~ only under the following circumstances:

(a) The recipient is disabled;

(b) The recipient is an adult caretaker who is not the parent and is receiving assistance on behalf of the child;

(c) The recipient is a parent who is caring for an infant; or

(d) The recipient 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.

(5) The number of recipients and their families exempted from subsection (1) of this section for a fiscal year shall not exceed twenty percent of the average monthly number of recipients and their families to which assistance is provided under the temporary assistance for needy families program.

~~((5))~~ (6) The department shall not exempt a recipient and his or her family from the application of subsection (1) of this section until after the recipient has received fifty-two months of assistance under this chapter.

~~((6))~~ (7) Beginning on October 31, 2005, the department shall provide transitional food stamp 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 food stamp certification until the end of the transition period."

On page 6, beginning on line 11 of the title amendment, after "74.08A.285" strike "and 74.08A.320" and insert ", 74.08A.320, and 74.08A.010"

Senator Benton spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Regala spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Benton on page 6, after line 9 to the committee striking amendment to Engrossed Second Substitute House Bill No. 3141.

The motion by Senator Benton failed and the amendment to the committee striking amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 3141.

The motion by Senator Regala carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "families;" strike the remainder of the title and insert "amending RCW 74.08A.285 and 74.08A.320; adding new sections to chapter 74.08A RCW; adding a new section to chapter 43.215 RCW; creating a new section; and repealing RCW 74.08A.200."

#### MOTION

On motion of Senator Regala, the rules were suspended, Engrossed Second Substitute House Bill No. 3141 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Regala, Brown and Franklin spoke in favor of passage of the bill.

Senators Schoesler, Carrell, Stevens, Parlette and Roach spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 3141 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 3141 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 27; Nays, 20; Absent, 0; Excused, 2.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kauffman, Keiser, Kline, Kohl-Welles, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, Kastama, Kilmer, King, Marr, Morton, Parlette, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

Excused: Senators McCaslin and Pflug

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3141 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED HOUSE BILL NO. 2805, by Representatives Ormsby, Campbell, Williams, Van De Wege, Simpson, White, Chase, Hasegawa, Rolfes and Conway

Regarding public works involving off-site prefabrication.

The measure was read the second time.

#### MOTION

Senator Kohl-Welles moved that the following committee striking amendment by the Committee on Labor, Commerce & Consumer Protection be adopted:

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trike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW to read as follows:

(1) For any public work estimated to cost over one million dollars, the contract must contain a provision requiring the submission of certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington. The information must be submitted to the department of labor and industries under subsection (2) of this section. The information that must be provided is:

(a) The estimated cost of the public works project;

(b) The name of the awarding agency and the title of the public works project;

(c) The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside Washington, including labor and materials; and

(d) The name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

(2)(a) The required information under this section must be submitted by the contractor or subcontractor as a part of the affidavit of wages paid form filed with the department of labor and industries under RCW 39.12.040. This information is only required to be submitted by the contractor or subcontractor who directly contracted for the off-site, prefabricated, nonstandard, project specific items produced outside Washington.

(b) The department of labor and industries shall include requests for the information about off-site, prefabricated, nonstandard, project specific items produced outside Washington on the affidavit of wages paid form required under RCW 39.12.040.

(c) The department of general administration shall develop standard contract language to meet the requirements of subsection (1) of this section and make the language available on its web site.

(3) For the purposes of this section, "off-site, prefabricated, nonstandard, project specific items" means products or items that are: (a) Made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work; (b) produced specifically for the public work and not considered to be regularly available shelf items; (c) produced or manufactured by labor expended to assemble or modify standard items; and (d) produced at an off-site location.

(4) The department of labor and industries shall transmit information collected under this section to the department of general administration on a regular basis. The department of general administration shall compile the information and submit it on an annual basis to the capital projects advisory review board created in RCW 39.10.220 for review and public hearing.

(5) This section applies to contracts entered into between September 1, 2010, and December 31, 2013.

**Sec. 2.** RCW 39.04.350 and 2009 c 197 s 2 are each amended to read as follows:

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3); ~~((and))~~

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and

(f) Until December 31, 2013, not have violated section 1 of this act more than one time as determined by the department of labor and industries.

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site."

Senator Kohl-Welles spoke in favor of adoption of the committee striking amendment.

#### MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted:

On page 1, line 5, after "over", strike "one" and insert "fifteen"

Renumber the sections consecutively and correct any internal references accordingly.

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 1, line 5 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator Honeyford failed and the amendment to the committee striking amendment was not adopted by voice vote.

#### MOTION

On motion of Senator Delvin, Senator Zarelli was excused.

#### MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted:

On page 1, line 8, after "items", insert "estimated to cost over seventy-five thousand dollars"

Reorder the sections consecutively and correct any internal references accordingly.

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 1, line 8 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator Honeyford failed and the amendment was not adopted by voice vote.

#### MOTION

Senator King moved that the following amendment by Senator King to the committee striking amendment be adopted:

On page 1, line 15, after "(c) The", strike "contract value of" and insert "dollar amount that has been allocated by the contractor who purchases"

On page 1, after "Washington" strike ", including labor and materials"

On page 1, line 19, after "of the" strike "contractor" and insert "company"

Reorder the sections consecutively and correct any internal references accordingly.

Senator King spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 1, line 15 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator King failed and the amendment to the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Kohl-Welles moved that the following amendment by Senator Kohl-Welles to the committee striking amendment be adopted:

On page 2, after line 5 of the amendment, insert the following:

"(d) Failure to submit the information required in subsection (1) of this section as part of the affidavit of wages paid form does not constitute a violation of RCW 39.12.050."

On page 2, after line 21 of the amendment, insert the following: "(6) This section does not apply to department of transportation public works projects."

Senator Kohl-Welles spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Kohl-Welles on page 2, after line 5 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator Kohl-Welles carried and the amendment to the committee striking amendment was adopted by voice vote.

#### MOTION

Senator King moved that the following amendment by Senator King to the committee striking amendment be adopted:

On page 2, line 8, after "primarily of", strike all material through "considered" on line 11, and insert the following: "structural precast concrete, structural steel, pipe systems, or sheet metal duct work; (b) produced specifically for the public work and not considered by the awarding agency"

Reorder the sections consecutively and correct any internal references accordingly.

Senators King and Holmquist spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 2, line 8 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator King failed and the amendment to the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator King moved that the following amendment by Senator King to the committee striking amendment be adopted:

On page 2, after line 13, insert the following: "The awarding agency shall have the authority and obligation to determine whether an item included in the public works project is an off-site, prefabricated, nonstandard, project-specific item. The agency's determination is nonbinding and not subject to appeal."

Reorder the sections consecutively and correct any internal references accordingly.

Senators King and Holmquist spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 2, after line 13 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator King failed and the amendment to the committee striking amendment was not adopted by voice vote.

#### MOTION



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Senator Holmquist moved that the following amendment by Senator Holmquist to the committee striking amendment be adopted:

On page 2, line 15, after "to the", strike everything through "to the" on line 18.

On page 2, line 19, after "review" strike "and public hearing"

Renumber the sections consecutively and correct any internal references accordingly.

Senators Holmquist and Kohl-Welles spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Holmquist on page 2, line 15 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator Holmquist carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Haugen moved that the following amendment by Senator Haugen to the committee striking amendment be adopted:

On page 2, after line 21 of the amendment, insert the following:

"(6) This section does not apply to local transportation public works projects."

Senator Haugen spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Haugen on page 2, after line 21 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator Haugen carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Holmquist moved that the following amendment by Senator Holmquist to the committee striking amendment be adopted:

On page 2, after line 21, strike all of section 2.

Renumber the sections consecutively and correct any internal references accordingly.

On page 4, line 8 of the title amendment, strike "amending RCW 39.04.350;"

Senator Holmquist spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Holmquist on page 2, after line 21 to the committee striking amendment to Engrossed House Bill No. 2805.

The motion by Senator Holmquist failed and the amendment to the committee striking amendment was not adopted by a rising vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor, Commerce & Consumer Protection as amended to Engrossed House Bill No. 2805.

The motion by Senator Kohl-Welles carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "prefabrication;" strike the remainder of the title and insert "amending RCW 39.04.350; and adding a new section to chapter 39.04 RCW."

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed House Bill No. 2805 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kohl-Welles spoke in favor of passage of the bill.

Senator Schoesler moved pursuit to Rule 68, that Engrossed House Bill No. 2805 be committed to the Committee on Ways & Means.

REMARKS BY SENATOR EIDE

Senator Eide: "Thank you Mr. President. My understanding is that the fiscal note was under fifty thousand and that is ok here as far as I know, as far as it not going to Ways & Means. Excuse me it's forty-three thousand."

REPLY BY THE PRESIDENT

President Owen: "Senator Eide, the President in reading the rule doesn't believe that there's a dollar amount on it and the bill could be referred to anywhere. It just so happens that Senator Schoesler moved to refer it to Ways & Means."

Senator Eide spoke against the motion to commit.

The President declared the question before the Senate to be the motion by Senator Schoesler to commit Engrossed House Bill No. 2805 to the Committee on Ways & Means.

The motion by Senator Schoesler failed by a rising vote and the bill was not committed.

Senators King, Holmquist and Honeyford spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2805 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2805 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 28; Nays, 18; Absent, 0; Excused, 3.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Gordon, Hargrove, Hatfield, Hobbs, Jacobsen, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin and Tom

Voting nay: Senators Becker, Benton, Brandland, Carrell, Delvin, Haugen, Hewitt, Holmquist, Honeyford, Kastama, King,

Morton, Parlette, Roach, Schoesler, Sheldon, Stevens and Swecker

Excused: Senators McCaslin, Pflug and Zarelli

ENGROSSED HOUSE BILL NO. 2805 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

At 9:31 p.m., on motion of Senator Eide, the Senate adjourned until 9:30 a.m. Thursday, March 4, 2010.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

MOTION

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